UNITED STATES CODE ANNOTATED

Title 31

Money and Finance

Digitized by the Internet Archive
in 2010

http://www.archive.org/details/unitedstatescode31unit

UNITED STATES CODE ANNOTATED

The Code of the Laws of the United States in force December 7, 1925, as Enacted by Congress June 28 and Approved June 30, 1926

Annotated from all the Cases Construing these Laws

Prepared by the Editorial Staffs of
EDWARD THOMPSON COMPANY
AND
WEST PUBLISHING COMPANY

Title 31

Money and Finance

WEST PUBLISHING COMPANY
ST. PAUL, MINN.
EDWARD THOMPSON COMPANY
BROOKLYN, N. Y.
1927

COPYRIGHT, 1927
BY
WEST PUBLISHING COMPANY
AND
EDWARD THOMPSON COMPANY

PREFACE

TO

THE CODE OF THE LAWS OF THE UNITED STATES

This Code is the official restatement in convenient form of the general and permanent laws of the United States in force December 7, 1925, now scattered in 25 volumes—i. e., the Revised Statutes of 1878, and volumes 20 to 43, inclusive, of the Statutes at Large. No new law is enacted and no law repealed. It is prima facie the law It is presumed to be the law. The presumption is rebuttable by production of prior unrepealed Acts of Congress at variance with the Code. Because of such possibility of error in the Code and of appeal to the Revised Statutes and Statutes at Large, a table of statutes repealed prior to December 7, 1925, is published herein together with the Articles of Confederation; The Declaration of Independence; Ordinance of 1787; the Constitution with amendments and index; tables of cross references to the Revised Statutes, the Statutes at Large, the United States Compiled Statutes, Annotated, of the West Publishing Co., and the Federal Statutes, Annotated, of the Edward Thompson Co.; an appendix with the general and permanent laws of the first session of the Sixty-ninth Congress; and finally an exhaustive index of the laws in the Code and appendix.

The first official codification of the general and permanent laws of the United States was made in 1874 and followed by a perfected edition in 1878. From 1897 to 1907 a commission was engaged in an effort to codify the great mass of accumulating legislation. The work of the commission involved an expenditure of over $300,000, but was never carried to completion. More recently the task of codification was undertaken by the late Hon. Edward C. Little as chairman of the Committee on the Revision of the Laws of the House of Representatives, who labored indefatigably from 1919 to the day of his death, June 24, 1924. The volumes which represented the result of his labors were embodied in bills which passed the House of Representatives in three successive Congresses unanimously but failed of action in the Senate.

The Code now set forth has resulted from the hearty cooperation of the Committee of the House of Representatives on the Revision of the Laws, and the Select Committee of the United States Senate consisting of Richard P. Ernst, chairman, George Wharton Pepper, and William Cabell Bruce. Under the auspices of the committees of the House and the Senate the actual work of assembling and classifying

the mass of material has been done by the West Publishing Co. and the Edward Thompson Co. These two houses have subordinated their private interests to the public good and have produced a result which would have been impossible without them. Acknowledgment of valuable assistance is given to W. H. McClenon, of the Legislative Reference Division of the Library of Congress, and to the law officers and other representatives of the several departments, bureaus, and commissions of the Government. Appreciation is also expressed of the interest in the work taken by the Committee on the Revision of the Federal Statutes of the American Bar Association.

Scrutiny of this Code is invited. Constructive criticism is solicited. It is the ambition of the Committee on the Revision of the Laws of the House of Representatives gradually to perfect the Code by correcting errors, eliminating obsolete matter, and restating the law with logical completeness and with precision, brevity, and uniformity of expression.

Address criticisms to Chairman of the Committee on the Revision of the Laws of the House of Representatives, Washington, D. C.

ROY G. FITZGERALD, *Chairman.*

Washington, June 30, 1926.

FOREWORD

THE publishers of this annotated edition of the Code of the Laws of the United States are rendering a notable service to the public in general and to the legal profession in particular.

Cooperation between the publishers and the Committees of the Senate and House on Revision of the Laws made possible the preparation of the Code adopted by the Sixty-ninth Congress. The Code thus adopted is evidence of the law. After the correction of errors, inevitable in a work of this sort, the Code will no doubt be enacted into law and all the other legislation of Congress will be repealed. Meanwhile it is of the highest importance to bring together for ready reference all the legislation embodied in the Code and the mass of judicial decisions which have construed the legislation. This can best be done by distributing the Code through a series of volumes of convenient size, each volume containing a designated portion of the legislative text together with annotations of relevant judicial decisions. This task of division and addition has now been completed in a satisfactory way. The volume embodying legislation on a given subject can readily be taken from the library shelf or from the book-rack beside the desk and carried to court or wherever it is intended to be consulted. Mahomet need no longer seek the mountain. The mountain has distributed itself into foothills and all of them have come to him.

As a member of the Senate Committee on the Revision of Laws I have had something to do with the evolution of the Code. Members of the two Committees can appreciate, as few others can do, the magnitude of the problem of which the Code is a solution. While the annotations and other auxiliary matter account for the number of volumes in the present edition, it is well to remember that the Code itself, as issued from the Government Printing Office, is included within the limits of a single volume. That all the permanent and general legislation of a century and a half can be thus compressed is a fact to be borne in mind whenever it is charged that there has been an unreasonable multiplication of federal statutes. In spite of the popular impression to the contrary, I believe that a critical study of this body of law will disclose the Congress of the United States as the most conservative of the important legislatures of the world. I further believe that no set of volumes in the law library will be found more serviceable than those now made available for general use.

GEORGE WHARTON PEPPER.

Washington, D. C., December 16, 1926.

PUBLISHERS' PREFACE

THE "Code of the Laws of the United States," as passed by Congress in June, 1926, incorporates all of the laws of a general and permanent nature in force at the beginning of that session, that is, December 7, 1925.

Congress, in preparing the Code, had in mind the necessity for an arrangement of the laws which was convenient and accessible, and one which would also make provision for future growth.

To this end all of the existing laws are logically arranged under fifty titles. Many of these titles are subdivided into chapters, and lesser subdivisions wherever the matter lends itself to such arrangement.

The Code does not contain consecutive section numbers from beginning to end, as was the case in the Revised Statutes of 1878. The fifty titles comprising the Code are independently numbered, each title beginning with section 1. Gaps are left in the numbering, between the chapters and other subdivisions, so that new and amendatory acts may be inserted with due regard to their relation to the basic matter contained in the Code.

The purpose of this Annotated Edition is to add to this framework of the law, as represented by the text of the statutes, the constructions which the courts have placed upon these laws; for, as the Supreme Court has well said, "after a statute has been settled by judicial construction, the construction becomes * * * as much a part of the statute as the text itself." Without these constructions no man can know the law.

In addition, there has been supplied a great mass of historical data, showing the antecedents of the particular acts or sections, with comments on the sources and the character of the changes.

Many other editorial features have been supplied, which are designed to make the text and annotations more accessible or useful, not the least of which are Reference Tables showing where the laws have previously been placed in the Revised Statutes of 1878, the subsequent Statutes at Large, the Federal Statutes Annotated and the United States Compiled Statutes Annotated.

The entire work is supplemented by a most exhaustive and comprehensive index.

The editorial staffs of the two publishers, with the knowledge and experience gained over a long period of time in preparing annotated editions of the United States laws, have brought to this enterprise the background, the ability, and the judgment necessary to produce the character of work which the importance of the task demands.

In so far as the size of the title and the volume of annotations will permit, each title of the laws is comprised within a single volume of this set. It is felt that the advantages accruing from such a method

of publication will materially increase the value of the set for reference purposes.

A great step forward has been taken in the adoption of the plan for adding later laws and annotations to each title, through Supplementary Parts, which fit into the pocket at the back of each book, thus doing away with the necessity for publishing later matter in supplemental volumes, with all of their unavoidable inconveniences. These pocket parts are to be issued annually and cumulated from year to year.

Supplementing these pocket parts are Quarterly Pamphlets, which will contain all the laws and annotations which become available after the publication of the latest pocket part. These also are cumulated from quarter to quarter, the final cumulation supplied each year being in the form of pocket parts to be slipped into the backs of each volume of the set.

W. P. Co.
E. T. Co.

TABLE OF CONTENTS

	Page
Preface to U. S. Code	iii
Foreword	v
Publishers' Preface	vii
Table of Reporters and Reports Covered by Annotations	x
List of Titles	xi
Title 31, Money and Finance	3
Ch. 1. The national Budget and Audit system	3
2. Audit and settlement of accounts	21
3. The Treasurer	59
4. The Register	68
5. The Bureau of Engraving and Printing	70
6. Debts due by, or to, the United States	74
7. Bureau of the Mint, mints, and assay offices	160
8. Coins, coinage, and currency	174
9. Legal tender	221
10. The public moneys	228
11. Appropriations	282
12. The public debt	349

CITE THIS BOOK
USCA

Thus: 31 USCA § 21

THE ANNOTATIONS

IN THIS BOOK CLOSE AT THE PAGE INDICATED IN THE FOLLOWING VOLUMES:

47 Supreme Court Reporter, End
274 United States Reports, End
71 Lawyers' Edition, End
19 Federal Reporter (Second Series), End
138 Atlantic Reporter, page 192
223 New York Supplement, page 480
157 North Eastern Reporter, page 656
214 North Western Reporter, page 832
257 Pacific Reporter, End
138 South Eastern Reporter, page 800
113 Southern Reporter, page 608
296 South Western Reporter, page 352
35 Opinions Attorney General, page 190
62 Court of Claims, End
12 Court of Customs Appeals, End

THE TITLES OF THE U. S. CODE AND USCA ARE ARRANGED AND NUMBERED AS FOLLOWS

1. General Provisions.
2. The Congress.
3. The President.
4. Flag and Seal, Seat of Government, and the States.
5. Executive Departments and Government Officers and Employees.
6. Official and Penal Bonds.
7. Agriculture.
8. Aliens and Citizenship.
9. Arbitration.
10. Army.
11. Bankruptcy.
12. Banks and Banking.
13. Census.
14. Coast Guard.
15. Commerce and Trade.
16. Conservation.
17. Copyrights.
18. Criminal Code and Criminal Procedure.
19. Customs Duties.
20. Education.
21. Food and Drugs.
22. Foreign Relations and Intercourse.
23. Highways.
24. Hospitals, Asylums, and Cemeteries.
25. Indians.
26. Internal Revenue.
27. Intoxicating Liquors.
28. Judicial Code and Judiciary.
29. Labor.
30. Mineral Lands and Mining.
31. Money and Finance.
32. National Guard.
33. Navigation and Navigable Waters.
34. Navy.
35. Patents.
36. Patriotic Societies and Observances.
37. Pay and Allowances (Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service).
38. Pensions, Bonuses, and Veterans' Relief.
39. The Postal Service.
40. Public Buildings, Property, and Works.
41. Public Contracts.
42. The Public Health.
43. Public Lands.
44. Public Printing and Documents.
45. Railroads.
46. Shipping.
47. Telegraphs, Telephones, and Radiotelegraphs.
48. Territories and Insular Possessions.
49. Transportation.
50. War.

UNITED STATES CODE ANNOTATED

*

THE CODE OF THE LAWS OF THE UNITED STATES OF AMERICA

TITLE 31

MONEY AND FINANCE

Chap.		Sec.
1.	The national Budget and audit system	1
2.	Audit and settlement of accounts	71
3.	The Treasurer	141
4.	The register	161
5.	The Bureau of Engraving and Printing	171
6.	Debts due by, or to, the United States	191
7.	Bureau of the Mint, mints, and assay offices	251
8.	Coins, coinage, and currency	311
9.	Legal tender	451
10.	The public moneys	471
11.	Appropriations	581
12.	The public debt	731

Cross-References

Banks and Banking; see Title 12, Banks and Banking.

Comptroller of Currency; see Title 12, Banks and Banking.

Department of Treasury; see chapter 4, Title 5, Executive Departments and Government Officers and Employees.

CHAPTER 1.—THE NATIONAL BUDGET AND AUDIT SYSTEM

DEFINITIONS

Sec.

1. Short title.
2. Definitions.

THE BUDGET

11. President to transmit Budget to Congress; contents thereof.
12. Estimates of appropriations from reclamation fund.
13. Recommendations of President accompanying Budget.
14. Supplemental or deficiency estimates transmitted to Congress.
15. Estimates or requests for appropriations, etc., not to be submitted by department officers or employees except by request.
16. Bureau of Budget; director and assistant director; Budget, etc., to be prepared by bureau.
17. Attorneys and other employees of bureau; compensation; expenses of bureau; transfer of employees to bureau.
18. Detailed study of departments and establishments by bureau.
19. Powers and duties transferred to bureau.
20. Aid and information for committees of Congress.

Sec.

21. Information for bureau by departments and establishments; access to books, papers, etc., thereof.
22. Budget officers of departments and establishments; designation; duties.
23. Departmental estimates; revision; time for submission to bureau; failure to submit.
24. Same; form and manner of submission.

GENERAL ACCOUNTING OFFICE

41. Creation; control and direction of; certain offices abolished; officers, employees, books, papers, etc., transferred to General Accounting Office; seal thereof.
42. Comptroller General and Assistant Comptroller General.
43. Same; terms of office; removal from office; retirement.
44. Certain powers and duties transferred to General Accounting Office; conclusiveness of balances certified by Comptroller General.
45. Bureau of Accounts in Post Office Department; administrative examination of accounts and vouchers.
46. Laws governing General Accounting Office; copies of books, records, etc., thereof as evidence.

Sec.
47. Payment of adjusted accounts or claims.
48. Same; regulating payment of arrears of pay.
49. Forms, systems, and procedure prescribed by Comptroller General.
50. Forms for use in offices for collecting customs.
51. Rooms of General Accounting Office.
52. Attorneys and employees in General Accounting Office; appointment; removal; compensation; duties; official acts; rules and regulations made by Comptroller General.
53. Investigations and reports by Comptroller General.
54. Information furnished to Comptroller General by departments and establishments.
55. Eligible register for accountants for General Accounting Office.
56. Designation of person to sign warrants.
58. Leaves of absence; piece-rate employees.

DEFINITIONS

Section 1. Short title. This chapter may be cited as the "Budget and Accounting Act, 1921." (June 10, 1921, c. 18, § 1, 42 Stat. 20.)

Historical Note

This was the first section of an act entitled "An act to provide a national budget system and an independent audit of Government accounts, and for other purposes," cited in the credit to the text.

Section 205 of that act provided for the transmission of an alternative budget for the fiscal year ending June 30, 1923. Section 210 provided for the preparation and transmission to Congress of a codification of the laws relating to the transmission to Congress of statements of receipts and expenditures, and estimates of appropriations, with recommendations as to changes.

Section 217 made an appropriation for the establishment and maintenance of the Bureau of the Budget.

Section 315 transferred certain appropriations and portions of appropriations to the General Accounting Office, specified purposes for which they might be expended, and authorized changes in the number and compensation of officers and employees during the fiscal year ending June 30, 1922.

Section 316 provided that the General Accounting Office and Bureau of Accounts should not be regarded as a bureau or office created since Jan. 1, 1916, so as to deprive employees of additional compensation under section 6 of the Legislative, Executive and Judicial Appropriation Act for the fiscal year ending June 30, 1922.

Section 317 related to the transfer of employees to the General Accounting Office during such fiscal year.

Section 318 related to the time of taking effect of the Act.

These sections were evidently omitted from the Code as temporary.

§ 2. Definitions. When used in this chapter—The terms "department and establishment" and "department or establishment" mean any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including the municipal government of the District of Columbia, but do not include the legislative branch of the Government or the Supreme Court of the United States;

The term "the Budget" means the Budget required by section 11 of this title to be transmitted to Congress;

The term "bureau" means the Bureau of the Budget;

The term "director" means the Director of the Bureau of the Budget; and

The term "assistant director" means the Assistant Director of the Bureau of the Budget. (June 10, 1921, c. 18, § 2, 42 Stat. 20.)

THE BUDGET

§ 11. President to transmit Budget to Congress; contents thereof. The President shall transmit to Congress on the first day of each reg-

ular session, the Budget, which shall set forth in summary and in detail:

(a) Estimates of the expenditures and appropriations necessary in his judgment for the support of the Government for the ensuing fiscal year; except that the estimates for such year for the legislative branch of the Government and the Supreme Court of the United States shall be transmitted to the President on or before October 15 of each year, and shall be included by him in the Budget without revision;

(b) His estimates of the receipts of the Government during the ensuing fiscal year, under (1) laws existing at the time the Budget is transmitted and also (2) under the revenue proposals, if any, contained in the Budget;

(c) The expenditures and receipts of the Government during the last completed fiscal year;

(d) Estimates of the expenditures and receipts of the Government during the fiscal year in progress;

(e) The amount of annual, permanent, or other appropriations, including balances of appropriations for prior fiscal years, available for expenditure during the fiscal year in progress, as of November 1 of such year;

(f) Balanced statements of (1) the condition of the Treasury at the end of the last completed fiscal year, (2) the estimated condition of the Treasury at the end of the fiscal year in progress, and (3) the estimated condition of the Treasury at the end of the ensuing fiscal year if the financial proposals contained in the Budget are adopted;

(g) All essential facts regarding the bonded and other indebtedness of the Government; and

(h) Such other financial statements and data as in his opinion are necessary or desirable in order to make known in all practicable detail the financial condition of the Government. (June 10, 1921, c. 18, § 201, 42 Stat. 20.)

Historical Note

R. S. § 3669, requiring estimates for the public service to be submitted to Congress through the Secretary of the Treasury, and to be included in the book of estimates prepared under his direction; and a provision of Act Aug. 23, 1912, c. 350, § 9, 37 Stat. 415, requiring annual estimates of appropriations to be prepared and submitted only in the form and at the time required by law, and in no other form, and at no other time, were evidently omitted from the Code as superseded by this section or other sections of this chapter.

§ 12. Estimates of appropriations from reclamation fund. The aggregate of all estimates of appropriations from the "reclamation fund" contained in the Budget for any fiscal year shall be included in the totals of the Budget for that year. (Jan. 24, 1923, c. 42, 42 Stat. 1208.)

Historical Note

From the Interior Department appropriation act for the year 1924, cited in the credit to the text.

§ 13. Recommendations of President accompanying Budget. (a) If the estimated receipts for the ensuing fiscal year contained in the Budget, on the basis of laws existing at the time the Budget is transmitted, plus the estimated amounts in the Treasury at the close of

the fiscal year in progress, available for expenditure in the ensuing fiscal year are less than the estimated expenditures for the ensuing fiscal year contained in the Budget, the President in the Budget shall make recommendations to Congress for new taxes, loans, or other appropriate action to meet the estimated deficiency.

(b) If the aggregate of such estimated receipts and such estimated amounts in the Treasury is greater than such estimated expenditures for the ensuing fiscal year, he shall make such recommendations as in his opinion the public interests require. (June 10, 1921, c. 18, § 202, 42 Stat. 21.)

Historical Note

Act March 4, 1909, c. 299, § 7, 35 Stat. 1027, required the Secretary of the Treasury, upon receipt of the regular annual estimates, to estimate the revenues for the ensuing fiscal year, and, if the estimates for appropriations, including the estimated amount necessary to meet continuing and permanent appropriations, should exceed the estimated revenues, to transmit the estimates to Congress, and a detailed statement to the president, in order that he might advise Congress how the estimated appropriations could, with least injury to the public service, be reduced, or recommend loans or new taxes. That section was probably omitted from the Code as superseded by this section and other sections of this chapter.

§ 14. Supplemental or deficiency estimates transmitted to Congress. (a) The President from time to time may transmit to Congress supplemental or deficiency estimates for such appropriations or expenditures as in his judgment (1) are necessary on account of laws enacted after the transmission of the Budget, or (2) are otherwise in the public interest. He shall accompany such estimates with a statement of the reasons therefor, including the reasons for their omission from the Budget.

(b) Whenever such supplemental or deficiency estimates reach an aggregate which, if they had been contained in the Budget, would have required the President to make a recommendation under subdivision (a) of section 13 of this title, he shall thereupon make such recommendation. (June 10, 1921, c. 18, § 203, 42 Stat. 21.)

§ 15. Estimates or requests for appropriations, etc., not to be submitted by department officers or employees except by request. No estimate or request for an appropriation and no request for an increase in an item of any such estimate or request, and no recommendation as to how the revenue needs of the Government should be met, shall be submitted to Congress or any committee thereof by any officer or employee of any department or establishment, unless at the request of either House of Congress. (June 10, 1921, c. 18, § 206, 42 Stat. 21.)

§ 16. Bureau of Budget; director and assistant director; Budget, etc., to be prepared by bureau. There is created in the Treasury Department a bureau to be known as the Bureau of the Budget. There shall be in the bureau a director and an assistant director, who shall be appointed by the President and receive salaries of $10,000 and $7,500 a year, respectively. The assistant director shall perform such duties as the director may designate, and during the absence or incapacity of the director or during a vacancy in the office of director he shall act as director. The bureau, under such rules and regulations as the President may prescribe, shall prepare for him the Budget,

and any supplemental or deficiency estimates, and to this end shall have authority to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments. (June 10, 1921, c. 18, § 207, 42 Stat. 22.)

Historical Note

The words "the alternative budget" which appeared in the original text of this section preceding the words "and any supplemental or deficiency estimates" were evidently omitted as temporary and obsolete. See historical note to section 1 of this title.

For appropriation for the Bureau of the Budget for the fiscal year ending June 30, 1927, see Act March 2, 1926, c. 43, 44 Stat. 141.

§ 17. Attorneys and other employees of bureau; compensation; expenses of bureau; transfer of employees to bureau. (a) The director, under such rules and regulations as the President may prescribe, shall appoint attorneys and other employees and shall make expenditures for rent in the District of Columbia, printing, binding, telegrams, telephone service, law books, books of reference, periodicals, stationery, furniture, office equipment, other supplies, and necessary expenses of the office, within the appropriations made therefor.

(b) The director may appoint not more than four persons without regard to the civil service laws and regulations.

(c) All employees in the bureau whose compensation is at a rate of $5,000 a year or less shall be appointed in accordance with the civil service laws and regulations. (June 10, 1921, c. 18, § 208, 42 Stat. 22; Mar. 4, 1923, c. 265, §§ 1–14, 42 Stat. 1488–1499.)

Historical Note

Prior to its incorporation into the Code, paragraph (b) of this section read as follows: "(b) No person appointed by the Director shall be paid a salary at a rate in excess of $6,000 a year, and not more than four persons so appointed shall be paid a salary at a rate in excess of $5,000 a year."

It was evidently thought that the provisions of this paragraph as to salaries were superseded by the Classification Act of 1923 (chapter 13 of Title 5, Executive Departments and Government Officers and Employees), but that the combined effect of paragraphs (b) and (c) was to limit the number of persons that might be appointed without regard to civil service laws and regulations to four, and that this limitation was not superseded.

Prior to its incorporation into the Code, this section contained two additional paragraphs numbered (d) and (e), relative to the transfer of employees to the Bureau during the fiscal years ending June 30, 1921, and June 30, 1922, and relative to the right of employees of the Bureau to additional compensation under section 6 of the Legislative, Executive, and Judicial Appropriation Act for the same fiscal years.

These paragraphs were evidently omitted as temporary and obsolete.

§ 18. Detailed study of departments and establishments by bureau. The bureau, when directed by the President, shall make a detailed study of the departments and establishments for the purpose of enabling the President to determine what changes (with a view of securing greater economy and efficiency in the conduct of the public service) should be made in (1) the existing organization, activities, and methods of business of such departments or establishments, (2) the appropriations therefor, (3) the assignment of particular activities to particular services, or (4) the regrouping of services. The results of such study shall be embodied in a report or reports to the President, who may transmit to Congress such report or reports or

any part thereof with his recommendations on the matters covered thereby. (June 10, 1921, c. 18, § 209, 42 Stat. 22.)

§ 19. **Powers and duties transferred to bureau.** The powers and duties relating to the compiling of estimates conferred and imposed upon the Division of Bookkeeping and Warrants of the office of the Secretary of the Treasury on June 10, 1921, are transferred to the bureau. (June 10, 1921, c. 18, § 211, 42 Stat. 22.)

§ 20. **Aid and information for committees of Congress.** The bureau shall, at the request of any committee of either House of Congress having jurisdiction over revenue or appropriations, furnish the committee such aid and information as it may request. (June 10, 1921, c. 18, § 212, 42 Stat. 23.)

§ 21. **Information for bureau by departments and establishments; access to books, papers, etc., thereof.** Under such regulations as the President may prescribe, (1) every department and establishment shall furnish to the bureau such information as the bureau may from time to time require, and (2) the director and the assistant director, or any employee of the bureau when duly authorized, shall, for the purpose of securing such information, have access to, and the right to examine, any books, documents, papers, or records of any such department or establishment. (June 10, 1921, c. 18, § 213, 42 Stat. 23.)

§ 22. **Budget officers of departments and establishments; designation; duties.** (a) The head of each department and establishment shall designate an official thereof as Budget officer therefor, who, in each year under his direction and on or before a date fixed by him, shall prepare the departmental estimates.

(b) Such Budget officer shall also prepare, under the direction of the head of the department or establishment, such supplemental and deficiency estimates as may be required for its work. (June 10, 1921, c. 18, § 214, 42 Stat. 23.)

§ 23. **Departmental estimates; revision; time for submission to bureau; failure to submit.** The head of each department and establishment shall revise the departmental estimates and submit them to the bureau on or before September 15 of each year. In case of his failure so to do, the President shall cause to be prepared such estimates and data as are necessary to enable him to include in the Budget estimates and statements in respect to the work of such department or establishment. (June 10, 1921, c. 18, § 215, 42 Stat. 23.)

Historical Note

Provisions requiring estimates to be furnished to the Secretary of the Treasury on or before October 15th in each year, and, in case of failure, requiring estimates to be prepared in the Department of the treasury, were contained in Act March 3, 1901, c. 830, § 5, 31 Stat. 1009, which superseded Act March 3, 1875, c. 129, § 3, 18 Stat. 370. These provisions were probably omitted from the Code as superseded by this section and other sections of this chapter.

§ 24. **Same; form and manner of submission.** The departmental estimates and any supplemental or deficiency estimates submitted to the bureau by the head of any department or establishment shall be

prepared and submitted in such form, manner, and detail as the President may prescribe. (June 10, 1921, c. 18, § 216, 42 Stat. 23.)

GENERAL ACCOUNTING OFFICE

§ 41. Creation; control and direction of; certain offices abolished; officers, employees, books, papers, etc., transferred to General Accounting Office; seal thereof. There is created an establishment of the Government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States. The offices of Comptroller of the Treasury and Assistant Comptroller of the Treasury are abolished. All other officers and employees of the office of the Comptroller of the Treasury, except as otherwise provided in this chapter, shall be officers and employees in the General Accounting Office at their grades and salaries on July 1, 1921, and all books, records, documents, papers, furniture, office equipment and other property of the office of the Comptroller of the Treasury shall be the property of the General Accounting Office. The Comptroller General is authorized to adopt a seal for the General Accounting Office. (June 10, 1921, c. 18, § 301, 42 Stat. 23.)

Editorial comment.—The second sentence of this section, and perhaps the third, might have been omitted as temporary and executed.

Historical Note

R. S. § 271, as amended by Act July 31, 1894, c. 174, § 6, 28 Stat. 206, authorized the Comptroller of the Treasury to direct any of the auditors forthwith to audit and settle any particular account. It was probably omitted from the Code as obsolete, in view of the transfer of the duties and powers of both the Comptroller of the Treasury and the Auditors to the General Accounting Office by section 44 of this title.

R. S. § 268 provided for a First Comptroller and a Second Comptroller. Act July 31, 1894, c. 174, § 4, 28 Stat. 205, abolished the offices of Commissioner and Deputy Commissioner of Customs, Second Comptroller, and Deputy First and Second Comptrollers, and provided that the First Comptroller should be known as the Comptroller of the Treasury, and have the powers, duties and responsibilities of the First and Second Comptrollers and the Commissioner of Customs. Section 9 provided that the Act should operate merely as changing the designation of the First Comptroller and adding to and modifying his powers and duties, and not as creating new officers. These provisions were probably omitted from the Code as superseded or obsolete in view of this section and other sections of this chapter.

Act March 3, 1875, c. 130, § 2, 18 Stat. 396, provided for a Deputy First Comptroller and a Deputy Second Comptroller, and Act March 3, 1883, c. 128, § 1, 22 Stat. 539, authorized the Deputy First Comptroller to countersign warrants and other papers. These provisions were superseded by Act July 13, 1894, c. 174, § 4, 28 Stat. 205, which abolished the offices of Deputy First and Second Comptroller, provided for an Assistant Comptroller of the Treasury, and a chief clerk in the office of the Comptroller of the Treasury, required the Assistant Comptroller to perform such duties as might be prescribed by the Comptroller of the Treasury, and gave him power to countersign warrants and sign other papers. Act March 15, 1898, c. 68, § 1, 30 Stat. 288, fixed the salary of the Assistant Comptroller at $4,500. The appointment of an assistant comptroller, for the period of the war with Germany, for the performance of certain duties relating to the audit in other countries of the accounts of the military establishment, was authorized by a provision of Act Sept. 24, 1917, c. 56, § 12, 40 Stat. 293. This last mentioned provision was doubtless omitted from the Code as temporary and obsolete, and the other provisions specified were probably omitted as superseded and obsolete.

R. S. §§ 269, 270, 272, and 273, relative to the powers and duties of the First and Second Comptroller in certain respects, were repealed by the Dockery Act of July 31, 1894, c. 174, §§ 7, 8, 11, 12, 28 Stat. 206, 207, 209.

R. S. § 317, relative to the powers and duties of the Commissioner of Customs in certain respects, was superseded by various sections of the Dockery Act of July 31, 1894, c. 174.

Cross-References

See sections 50, 77, 505, and 631 of this title, section 97 of Title 25, Indians, sections 146 and 147 of Title 26, Internal Revenue, and section 681 of Title 46, Shipping, for functions, powers and duties formerly conferred or imposed on the First and Second Comptroller and Commissioner of Customs, and now conferred or imposed on the Comptroller General or General Accounting Office. And see, also, section 547 of Title 12, Banks and Banking, for a reference to the First Comptroller of the Treasury which probably should refer to the Comptroller General or General Accounting Office.

Notes of Decisions

Historical.—See, also, notes to section 44 of this title.

The accounting officers of the Treasury, created by the act establishing the Department, Act Sept. 2, 1789, c. 12, 1 Stat. 65 (superseded) were an Auditor and a Comptroller. Act March 3, 1817, c. 45, 3 Stat. 366 (superseded) created four additional auditors and one additional comptroller. U. S. v. Gilmore (Neb. 1869) 7 Wall. 491, 493, 19 L. Ed. 282; (1852) 5 Op. Atty. Gen. 630, 632; (1893) 20 Op. Atty. Gen. 677, 679.

1. Authority of Comptroller General.—The Comptroller General has no statutory authority to require to be forwarded to him any other papers relating to entries of imported merchandise than those prescribed by the Secretary of the Treasury. (1924) 34 Op. Atty. Gen. 311.

The Comptroller General has no authority, express or implied, to review the collector's liquidations of entries of imported merchandise and draw back entries. Id.

Under Budget Act June 10, 1921 (incorporated in part in this section), there is no authority in the Comptroller General to withhold portion of pay of a naval officer because of latter's alleged indebtedness to United States. Mare v. Alexander (D. C. Mass. 1924) 2 F.(2d) 895.

2. Mandamus against Comptroller General.—Court of Appeals of District of Columbia will not control by mandamus exercise of judgment and discretion of Comptroller General, so as to compel issuance of voucher. U. S. ex rel. L. Margulies & Sons v. McCarl (1926) 10 F.(2d) 1012, 56 App. D. C. 147.

3. Authority of Attorney General to pass on question relating to General Accounting Office.—Any order given by the General Accounting Office to the executive departments affecting the performance by them of executive functions independently confided to them necessarily involves a question of law which may be submitted to the Attorney General for his opinion. (1922) 33 Op. Atty. Gen. 383, wherein, after referring to sec. 44 of this title and this section, it was said:

"The above provisions declare the complete independence of the General Accounting Office. Such independence necessarily exists, however, only with respect to the power and duties which the statute gives to the General Accounting Office. Notwithstanding the independent position of that office any order which extends beyond the authority given it by Congress is void. Therefore any order given by the General Accounting Office to the executive departments affecting the performance by them of executive functions independently confided to them necessarily involves a question of law which may be submitted to the Attorney General for his opinion.

"My predecessors have frequently said that they would not review a question involving disbursements which had been passed upon by the Comptroller of the Treasury. The final authority of the Comptroller upon such an issue was based upon the provisions of section 8 of the Dockery Act of July 31, 1894 [incorporated in part in section 74 of this title], which provided:

" 'Disbursing officers, or the head of any executive department, or other establishment not under any of the executive departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.'

"This section makes the ruling of the Comptroller of the Treasury (now the Comptroller General) conclusive as to particular payments to be made by and through executive departments. The present question does not involve a ruling upon particular payments to be made by and through an executive department, but it involves the duty of the executive departments to obey an order entirely prohibiting them from making payments of a general class which they are now authorized by law to make. I find nothing in section 8 of the Dockery Act or in the Budget and Accounting Act of 1921 [incorporated largely in this chapter] which deprives the head of an executive department of the right to have the opinion of the Attorney General upon such a question.

"The authority of the General Accounting Office as established by the Act of June 10, 1921 [incorporated largely in this chapter] must be construed in the light of the prevailing practice of making payment for departmental expenditures through

departmental disbursing officers. That this practice has received legislative sanction is shown by the numerous statutes defining the duties and functions of disbursing officers."

4. **Decisions relating to abolished offices.**—Prior to the enactment of the act (incorporated in this chapter) there existed no statutory authority in the Comptroller to fix the time or period at which the fees and emoluments of the office of the recorder of deeds of the District of Columbia must be accounted for or deposited in the United States treasury. (1923) 34 Op. Atty. Gen. 48.

R. S. § 271 (superseded) as overlooking transfer of duties to Second Comptroller, see Cotton v. U. S. (1894) 29 Ct. Cl. 207. As to power of Second Comptroller to direct audit by Auditors, see (1834) 2 Op. Atty. Gen. 625.

As to power of First Comptroller to direct the Commissioner of the General Land Office forthwith to audit any particular account relating to the public lands, see (1886) 18 Op. Atty. Gen. 450.

Direction to audit account which the auditor has no authority to settle, see U. S. v. Olmsted (C. C. Iowa, 1900) 106 F. 286, 288, affirmed (C. C. A. 1902) 118 F. 433.

As to issuance and countersigning of warrants, see (1852) 5 Op. Atty. Gen. 630, 656, 657; (1881) 17 Op. Atty. Gen. 233.

As to the word "settled," as used in R. S. sec. 273 (repealed) see (1876) 15 Op. Atty. Gen. 139.

As to powers of commissioner of customs, see U. S. v. Windom (1890) 19 D. C. 61.

5. —— **Advice to Secretary of the Treasury on legal questions.**—See (1893) 20 Op. Atty. Gen. 654.

6. —— **Restrictions upon carrying on trade, etc.**—See (1847) 4 Op. Atty. Gen. 555.

7. —— **Recovery of debts.**—See Neilson v. Lagow (Ind. 1851) 12 How. 98, 107, 13 L. Ed. 909; U. S. v. Nicoll (C. C. N. Y. 1826) Fed. Cas. No. 15,879.

§ 42. Comptroller General and Assistant Comptroller General. There shall be in the General Accounting Office a Comptroller General of the United States and an Assistant Comptroller General of the United States, who shall be appointed by the President with the advice and consent of the Senate, and shall receive salaries of $10,000 and $7,500 a year, respectively. The Assistant Comptroller General shall perform such duties as may be assigned to him by the Comptroller General, and during the absence or incapacity of the Comptroller General, or during a vacancy in that office, shall act as Comptroller General. (June 10, 1921, c. 18, § 302, 42 Stat. 23.)

§ 43. Same; terms of office; removal from office; retirement. Except as hereinafter provided in this section, the Comptroller General and the Assistant Comptroller General shall hold office for fifteen years. The Comptroller General shall not be eligible for reappointment. The Comptroller General or the Assistant Comptroller General may be removed at any time by joint resolution of Congress after notice and hearing, when, in the judgment of Congress, the Comptroller General or Assistant Comptroller General has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. Any Comptroller General or Assistant Comptroller General removed in the manner herein provided shall be ineligible for reappointment to that office. When a Comptroller General or Assistant Comptroller General attains the age of seventy years, he shall be retired from his office. (June 10, 1921, c. 18, § 303, 42 Stat. 23.)

§ 44. Certain powers and duties transferred to General Accounting Office; conclusiveness of balances certified by Comptroller General. All powers and duties which on June 30, 1921, were conferred or im-

posed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with sections 1, 2, 11, 13 to 24, 41 to 47, 49 to 55, 58, 471, and 581 of this title and provisions of law enacted subsequent to June 30, 1921, be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. The balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government. The revision by the Comptroller General of settlements made by the six auditors shall be discontinued, except as to settlements made before July 1, 1921. (June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

R. S. § 276 provided for six auditors of accounts to be known as the First, Second, Third, Fourth, Fifth, and Sixth Auditors. Act July 31, 1894, c. 174, § 3, 28 Stat. 205, provided that the auditors should be designated as Auditor for the Treasury Department, Auditor for the War Department, etc. Section 9 provided that such act should operate merely as changing their designations, and adding to and modifying their duties and powers, and not as creating new officers; and that laws not inconsistent therewith relating to the Auditors should be understood to relate to the Auditor to whom that Act assigned the business of the department or establishment concerned in the matter. The foregoing provisions were evidently omitted from the Code as superseded or obsolete.

Six Deputy Auditors, one in the office of each Auditor, were authorized by the provisions of the sundry civil appropriation act of 1875, relating to the organization of the Treasury Department, Act March 3, 1875, c. 130, § 2, 18 Stat. 396. The Sixth Auditor was designated therein as the Auditor of the Treasury for the Post Office Department. And authority was given to designate his Deputy, in the name of said Auditor, to sign letters and papers, by a provision of Act March 3, 1891, c. 541, § 1, 26 Stat. 920. These provisions were to some extent superseded or rendered inoperative by the subsequent changes in the organization of the Department and the offices therein, and in the system of accounting, by provisions of the Dockery Act of July 31, 1894, c. 174. Section 3 of that Act changed the designation of the deputy auditors and other subordinates and required each deputy auditor to sign such letters and papers as the Auditor might direct. Act March 4, 1911, c. 237, § 1, 36 Stat. 1190, abolished the position of deputy auditor and transferred the powers and duties thereof to the chief clerk and chief of division, except in the office of the Auditor for the Post Office Department where such duties and powers were transferred to the assistant and chief clerk. All of these provisions were evidently omitted as superseded or obsolete.

The appointment of an assistant auditor, for the period of the war with Germany, for the performance of certain duties relating to the audit in other countries of the accounts of the military establishment, was provided for, by a provision of Act Sept. 24, 1917, c. 56, § 12, 40 Stat. 293. This was evidently omitted as temporary and obsolete.

The provision of this section concerning the conclusiveness of balances certified, superseded a provision as to the conclusiveness of balances certified by Auditors contained in Act July 31, 1894, c. 174, § 8, 28 Stat. 207. That section repealed an earlier provision on the subject contained in R. S. § 191.

Cross-References

A portion of the original text of this section omitted here will be found in section 45 of this title. See the notes to that section.

Notes of Decisions

See, also, notes to section 41 of this title.

Historical.—History of the office of Auditor since 1789 reviewed (1893) 20 Op. Atty. Gen. 677.

Act July 2, 1836, c. 270, § 8, 5 Stat. 81 (superseded) created "an Auditor of the Treasury for the Post Office Department," who was directed to report both to the Secretary of the Treasury and the Postmaster General. Id.

1. Restrictions upon carrying on trade, etc., by Auditors.—See (1847) 4 Op. Atty. Gen. 555.

2. Conclusiveness of balances.—For a long series of years, extending from the first organization of the Treasury Department to 1868, there was a controversy as how far, if at all, the balances and action of a comptroller were subject to revision and change by the heads of departments or the President. Upon the advice of several Attorneys General, the question was practically settled against the right of the President and in favor of that of the Secretary of the Treasury. But the Comptrollers yielded with reluctance, and by Act March 30, 1868, c. 256, § 1, 15 Stat. 54, the balances certified by the Comptrollers were made conclusive upon the executive branch of the government, and subject to revision only by Congress or the proper courts, and the provisions of that section were reproduced in R. S. § 191, afterwards repealed by the Dockery Act of July 31, 1894, c. 174, § 8 (superseded in part), which made other provisions on the subject. McKnight v. U. S. (1877) 13 Ct. Cl. 292, 307, affirmed (1878) 98 U. S. 179, 25 L. Ed. 115. See (1823) 1 Op. Atty. Gen. 624; (1829) 2 Op. Atty. Gen. 303; (1832) 2 Op. Atty. Gen. 508, 544; (1852) 5 Op. Atty. Gen. 630, 656; (1864) 11 Op. Atty. Gen. 14, 129. See, also, McKee v. U. S. (1876) 12 Ct. Cl. 504, 555, reversed U. S. v. McKee (1877) 97 U. S. 233, 24 L. Ed. 911, dissenting opinion of Richardson, J.

Before the passage of Act March 30, 1868, c. 256, § 1 (R. S. § 191, repealed) the heads of departments and even the President, as superior officers, claimed the right to direct the accounting officers in the matter of accounting and to change balances found by them when acting on their own judgment, before warrants were drawn for payment, and this claim of right was frequently resisted by the accounting officers. The question was never finally settled until the enactment of that act. Thereafter, for the purpose of drawing warrants and making payments, the balances stated by the accounting officers were final and conclusive upon the executive branch of the Government. But by the very terms of the act they were not conclusive upon Congress or the proper courts. Duval v. U. S. (1889) 25 Ct. Cl. 46, 57; (1882) 17 Op. Atty. Gen. 353. And see (1882) 17 Op. Atty. Gen. 448.

Under R. S. § 191, (repealed) the decisions of the Comptroller, so far as they related to balances of accounts found and stated by him, were conclusive upon the executive branch of the government, but in other respects the Comptrollers were as much subject to the regulations and directions of the Secretary as other subordinate officers of the Treasury. Real Estate Savings Bank of Pittsburgh v. U. S. (1880) 16 Ct. Cl. 335, affirmed U. S. v. Real Estate Savings Bank (1881) 104 U. S. 728, 26 L. Ed. 908.

The provision of R. S. § 191, (repealed) that the balances stated by the accounting officers should be conclusive upon the executive branch of the government, did not conclude the head of an Executive Department in the exercise of his legal discretion as to orders issued to his subordinates. In re Billings (1888) 23 Ct. Cl. 166.

Where a claim or account against the government, arising in the military service, had been adjusted by the accounting officers of the Treasury, and the balance found due thereon certified by the Comptroller to the War Department for payment, the Secretary of War could not lawfully withhold his requisition simply on the ground that the balance so certified was in excess of what the officers of his department deemed allowable. (1869) 13 Op. Atty. Gen. 6.

Where the question was merely one of computation or amount, the decision of the accounting officers was to be regarded as final. Id.

The purpose of R. S. § 191 (repealed) was to declare the effect of the settlement of an account by the accounting officers of the Treasury as regards the executive branch of the government, not to define or explain the duties of those officers relative to the settlement itself; and the provisions thereof comprehend all balances arising upon settlement of accounts which it becomes the duty of the Comptroller to certify to the heads of departments. (1876) 15 Op. Atty. Gen. 140.

R. S. § 191 (repealed) was limited to cases where balances were found upon the settlement of accounts or claims, and certificates thereof were transmitted to the head of the proper department for his warrant or requisition; it did not extend to any case where no balance was certified, or where the whole account or claim was disallowed. (1877) 15 Op. Atty. Gen. 192.

It was the duty of a head of a department, after facts had been submitted under R. S. § 191 (repealed) which, in his judgment, affected the correctness of a balance certified to him upon settlement of a claim by the proper accounting officers of the Treasury, and after the certificate had been returned by the Comptroller with the decision in the case reaffirmed, to issue his requisition for payment of the balance certified. Signing the requisition in such case under protest was without effect. (1876) 15 Op. Atty. Gen. 596.

Act March 3, 1887 (section 41, par. 20, of Title 28, Judicial Code and Judiciary), gave the circuit and district courts concurrent jurisdiction of claims against the United States, except "claims which have heretofore been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same." R. S. § 269 (since

repealed), directed the first comptroller of the treasury "to superintend the adjustment and preservation of the public accounts subject to his revision;" and section 191 (since repealed), provided that the balances from time to time certified to the heads of departments by the comptrollers of the treasury, upon the settlement of public accounts, should be conclusive upon the executive branch of the government, and be subject to revision only by congress or the proper courts. Held, that the disallowance of a circuit court commissioner's fees by the first comptroller of the treasury was not within the exception. U. S. v. Rand (Me. 1892) 53 F. 348, 3 C. C. A. 556, following (C. C. 1890) 43 F. 560. The proviso was limited to a rejection of a claim, or an adverse report thereon, by a court, department, or commission which determined the rights of parties, and therefore the disallowance of a marshal's account for fees by the first comptroller of the treasury was not within the proviso, as his decision was conclusive only within the executive department. Harmon v. U. S. (C. C. Me. 1890) 43 F. 560, affirmed (1893) 13 S. Ct. 327, 147 U. S. 268, 37 L. Ed. 164. The provision of Act July 31, 1894, § 8 (superseded in part) that the finding of the comptroller on claims against the United States should be final and conclusive as to the executive branch of the government, did not render such finding conclusive on the courts, but left the merits open for judicial determination. U. S. v. Gillmore (C. C. N. Y. 1911) 189 F. 761.

Where a claim or account against the government arising in the military service has been adjusted by the accounting officers of the treasury, and the balance found due thereon certified by the comptroller to the War Department for payment, the Secretary of War cannot lawfully withhold his requisition simply on the ground that the balance so certified is in excess of what the officers of his department deem to be allowable. Where the question is merely one of computation or amount the decision of the accounting officers is to be regarded as final. (1869) 13 Op. Atty. Gen. 5.

Where an account has been passed by the comptroller, and his allowances paid on the requisition of the War Department, it will be a final settlement in the department. Although the decision of the comptroller is final, the head of the proper department, before signing the warrant for a balance certified to him by the comptroller, might have submitted to the comptroller any facts in his judgment affecting the correctness of such balance under R. S. sec. 191 (repealed). When the comptroller has made a final settlement of a claim, the direction of the Secretary of War to have the accounts reexamined by the quartermaster-general has no validity. Baltimore, etc., R. Co. v. U. S. (1899) 34 Ct. Cl. 484.

For other decisions and opinions under R. S. sec. 191 (repealed) see (1869) 13 Op. Atty.-Gen. 167; (1872) 14 Op. Atty.-Gen. 65; (1876) 15 Op. Atty.-Gen. 139; (1877) 15 Op. Atty.-Gen. 626; (1881) 17 Op. Atty.-Gen. 233; (1893) 20 Op. Atty.-Gen. 655; U. S. v. Rand (Me. 1892) 53 F. 348, 3 C. C. A. 556; U. S. v. Windom (Dist. Col. 1891) 137 U. S. 636, 11 S. Ct. 197, 34 L. Ed. 811; Mississippi Cent. R. Co. v. U. S. (1888) 23 Ct. Cl. 32; Baltimore, etc., R. Co. v. U. S. (1899) 34 Ct. Cl. 484; Real Estate Sav. Bank's Case (1880) 16 Ct. Cl. 352; McKnight's Case (1877) 13 Ct. Cl. 307; McKee's Case (1876) 12 Ct. Cl. 533; Delaware River Steamboat Co.'s Case (1869) 5 Ct. Cl. 55; U. S. v. Cadwalader (D. C. Pa. 1835) Gilp. 563, 25 Fed. Cas. No. 14,706; U. S. v. Jones (Dist. Col. 1856) 18 How. 92, 15 L. Ed. 274; U. S. v. Lynch (Dist. Col. 1890) 137 U. S. 280, 11 S. Ct. 114, 34 L. Ed. 700; Stanton v. U. S. (C. C. Conn. 1889) 37 F. 252, affirmed U. S. v. Stanton (C. C. A. 1895) 70 F. 890; Erwin v. U. S. (D. C. Ga. 1889) 37 F. 470.

§ 45. Bureau of Accounts in Post Office Department; administrative examination of accounts and vouchers. The administrative examination of the accounts and vouchers of the Postal Service imposed by law on June 30, 1921, upon the Auditor for the Post Office Department shall be performed by a bureau in the Post Office Department to be known as the Bureau of Accounts. The Bureau of Accounts shall be under the direction of a comptroller, who shall be appointed by the President with the advice and consent of the Senate, and shall receive a salary of $5,000 a year.* The comptroller shall perform the administrative duties performed by the Auditor for the Post Office Department and such other duties in relation thereto as the Postmaster General may direct. The officers and employees of the Office of the Auditor for the Post Office Department engaged in the administrative examination of accounts shall be officers and em-

ployees of the Bureau of Accounts at their grades and salaries on July 1, 1921. (June 10, 1921, c. 18, § 304, 42 Stat. 24.)

* The words "and shall receive a salary of $5,000 a year" should probably be omitted or changed to read "and shall receive a salary in accordance with chapter 13 of Title 5."

Historical Note

Prior to its incorporation into the Code, this section contained the provisions now embraced in section 44 of this title, and additional provisions making the appropriation for the salary of the Auditor for the Post Office Department for the fiscal year 1922 available for the salary of the Comptroller, Bureau of Accounts, and apportioning certain appropriations and books, records, etc., between the Bureau of Accounts and the General Accounting Office. These last mentioned provisions were evidently omitted as temporary.

Notes of Decisions

1. **Examination of accounts and vouchers of postal service.**—The provisions of this sub-chapter and especially the provisions of section 49 of this title, limit the extent of the administrative examination of the accounts and vouchers of the postal service which the Postmaster-General may direct, under this section, to be performed by the Comptroller of the Post Office Department. (1922) 33 Op. Atty.-Gen. 80.

§ 46. Laws governing General Accounting Office; copies of books, records, etc., thereof as evidence. All laws relating generally to the administration of the departments and establishments shall, so far as applicable, govern the General Accounting Office. Copies of any books, records, papers, or documents, and transcripts from the books and proceedings of the General Accounting Office, when certified by the Comptroller General or the Assistant Comptroller General under its seal, shall be admitted as evidence with the same effect as the copies and transcripts referred to in sections 661 and 665 of Title 28. (June 10, 1921, c. 18, § 306, 42 Stat. 24.)

§ 47. Payment of adjusted accounts or claims. The Comptroller General may provide for the payment of accounts or claims adjusted and settled in the General Accounting Office, through disbursing officers of the several departments and establishments, instead of by warrant. (June 10, 1921, c. 18, § 307, 42 Stat. 25.)

§ 48. Same; regulating payment of arrears of pay. The Comptroller General may prescribe rules to govern the payment of arrears of pay due to any petty officer, seaman, or other person not an officer, on board any vessel in the employ of the United States, which has been sunk or destroyed, in case of the death of such petty officer, seaman, or person, to the person designated by law to receive the same. (R. S. § 274; July 31, 1894, c. 174, § 4, 28 Stat. 205; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

Prior to its incorporation into the Code, this section referred to the "Second Comptroller" instead of the "Comptroller General." The office of the Second Comptroller was abolished, and its duties and powers transferred to the Comptroller of the Treasury, by the Dockery Act of July 31, 1894, c. 174, § 4, 28 Stat. 205; and the office of Comptroller of the Treasury was abolished and its powers and duties transferred to the General Accounting Office, which is under the control and direction of the Comptroller General, by Act June 10, 1921, c. 18, §§ 301, 304, 42 Stat. 23, 24.

§ 49. Forms, systems and procedure prescribed by Comptroller General. The Comptroller General shall prescribe the forms, sys-

tems, and procedure for administrative appropriation and fund accounting in the several departments and establishments, and for the administrative examination of fiscal officers' accounts and claims against the United States. (June 10, 1921, c. 18, § 309, 42 Stat. 25.)

Historical Note

This section superseded a provision of Act July 31, 1894, c. 174, § 5, 28 Stat. 206, requiring the Comptroller of the Treasury under the direction of the Secretary of the Treasury to prescribe the forms of keeping and rendering all public accounts, except those relating to the postal revenues and expenditures therefrom.

Previous to that enactment, it was the duty of the Second Comptroller to report forms of keeping and stating accounts in the War and Navy Departments, under R. S. § 273, which was repealed by Act July 31, 1894, c. 174, § 7, subd. 3, 28 Stat. 206.

A further provision of Act July 31, 1894, c. 174, § 5, 28 Stat. 206 required the return of fees mentioned in section 1725 of the Revised Statutes to be made as prescribed by the Comptroller of the Treasury. See section 94 of Title 22, Foreign Relations and Intercourse.

Notes of Decisions

1. In general.—The Comptroller General does not have power to prohibit, but merely power to regulate accounting. (1924) 34 Op. Atty. Gen. 83.

He may regulate the forms, systems and procedure for administrative accounting, but cannot prohibit the accounting work done in Federal departments and establishments. Id.

Regulations of the Comptroller General beyond the scope of his delegated powers are void. Id.

By this section Congress intended that accounting work should be done as theretofore in the several executive departments and government establishments. Id.

2. Disbursing officers of War Department.—The Secretary of War would not be justified by reason of anything contained in General Accounting Office General Regulations No. 13 in failing to make, or in permitting or requiring disbursing officers under him to refrain from making, payment as now authorized by law of transportation obligations created by and under authority of the Secretary of War. Nor would the Secretary of War be justified in omitting or in permitting or requiring the omission of the administrative examination now required by law to be made of disbursing officers' accounts of such payments prior to the transmission of such accounts to the General Accounting Office for settlement. (1922) 33 Op. Atty.-Gen. 383, wherein it was said:

"If disbursing officers should not disburse the public money they would have no accounts subject to 'administrative examination.' Section 309 [this section] makes it the duty of the Comptroller General to prescribe the 'forms, systems, and procedure' for the administrative examination of the accounts of disbursing officers. The imposition of this duty shows that the Budget and Accounting Act [incorporated largely in this chapter] contemplated that after its passage those fiscal officers authorized to make disbursements would pay out the public money so that their accounts would be forwarded for departmental examination as required by law.

"Section 312-d of the same Act [section 53 (par. d) of this title] provides as to the Comptroller General:

" 'He shall submit to Congress reports * * * upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.' (42 Stat. 26.)

"There would be no occasion for departmental inspection of the accounts of disbursing officers if they did not pay out the public funds. Section 312-d recognizes that such inspection will continue under the Budget and Accounting Act. This indicates that nothing in the Act was looked upon as taking from disbursing officers their existing power of paying the ordinary obligations of the Government upon presentation to them of proper vouchers."

3. Postal savings accounting.—The Comptroller General has no authority to direct the discontinuance of accounting in the division of Postal Savings. (1924) 34 Op. Atty. Gen. 83.

4. Recorder of deeds of District of Columbia.—Provisions of this act in nowise supersede or modify the provisions of the District of Columbia Code, § 553 requiring the recorder of deeds to pay surplus fees into the Treasury, but not fixing a specific time therefor. (1923) 34 Op. Atty. Gen. 48.

This section authorizes the Comptroller General to prescribe the forms, systems and procedure to be adopted by the recorder of deeds of the District of Columbia in keeping his records and rendering accounts of the fees received in his official capacity, but the Comptroller General has no statutory authority to fix the time or period at which such accounts

shall be rendered or the surplus fees deposited in the treasury. Id.

The president is empowered to fix the time or period of accounting for and depositing in the treasury of the surplus fees by the recorder of deeds of the District of Columbia and may require the recorder to give bond. Id.

No executive officer without express statutory authority can direct the recorder of deeds of the District of Columbia to account for and pay over the surplus fees of his office in any other manner or at any time different from that fixed by the order of the president and the terms of his bond. Id.

§ 50. Forms for use in offices for collecting customs. The Comptroller General shall report to the Secretary of the Treasury official forms to be used in the different offices for collecting the public receipts from customs. (R. S. § 318; July 31, 1894, c. 174, § 4, 28 Stat. 205; June 10, 1921, c. 18, §§ 304, 309, 42 Stat. 24, 25.)

Historical Note

Prior to its incorporation into the Code, this section read as follows: "The Commissioner of Customs shall report to the Secretary of the Treasury official forms to be used in the different offices for collecting the public receipts from customs, and all the manner and form of keeping and stating the accounts of the persons employed therein."

The office of Commissioner of Customs was abolished, and its duties and powers were transferred to the Comptroller of the Treasury, by the Dockery Act of July 31, 1894, c. 174, § 4, 28 Stat. 205; and the office of Comptroller of the Treasury was abolished, and the powers and duties of that officer were transferred to the General Accounting Office, which is under the direction and control of the Comptroller General, by Act June 10, 1921, c. 18, §§ 301, 304, 42 Stat. 23, 24.

The provision concerning the manner and form of keeping and stating accounts, was probably omitted as superseded by section 49 of this title.

§ 51. Rooms of General Accounting Office. The General Accounting Office shall occupy temporarily the rooms occupied on June 10, 1921, by the office of the Comptroller of the Treasury and the six auditors. (June 10, 1921, c. 18, § 310, 42 Stat. 25.)

Historical Note

Prior to its incorporation into the Code, this section contained further provisions abolishing the offices of the six auditors, and transferring to the General Accounting Office the officers and employees thereof, and the books, records, documents, papers, furniture, office equipment and other property of those offices, and of the Division of Bookkeeping and Warrants, so far as they related to the work of such division transferred to the General Accounting Office. These provisions were evidently omitted as temporary and executed.

§ 52. Attorneys and employees in General Accounting Office; appointment; removal; compensation; duties; official acts; rules and regulations made by Comptroller General. (a) The Comptroller General shall appoint and remove attorneys and other employees in the General Accounting Office.

(b) All such appointments, except to positions carrying a salary at a rate of more than $5,000 a year, shall be made in accordance with the civil service laws and regulations.

(c) The Comptroller General may appoint not more than four persons without regard to the civil service laws and regulations.

(d) All officers and employees of the General Accounting Office, whether transferred thereto or appointed by the Comptroller General, shall perform such duties as may be assigned to them by him.

(e) All official acts performed by such officers or employees specially designated therefor by the Comptroller General shall have the

same force and effect as though performed by the Comptroller General in person.

(f) The Comptroller General shall make such rules and regulations as may be necessary for carrying on the work of the General Accounting Office, including rules and regulations concerning the admission of attorneys to practice before such office. (June 10, 1921, c. 18, § 311, 42 Stat. 25.)

Historical Note

Prior to its incorporation into the Code, paragraph (a) of this section read as follows: "(a) The Comptroller General shall appoint, remove, and fix the compensation of such attorneys and other employees in the General Accounting Office as may from time to time be provided for by law."

The words "and fix the compensation" were evidently omitted as superseded by the Classification Act of 1923 (chapter 13 of Title 5, Executive Departments and Government Officers and Employees). The words "such" and "as may from time to time be provided for by law" may have been omitted as inappropriate in view of the lump sum form of recent appropriations for the personnel of the General Accounting office and other departments and offices.

Prior to its incorporation into the Code, paragraph (c) read as follows: "(c) No person appointed by the Comptroller General shall be paid a salary at a rate of more than $6,000 a year, and not more than four persons shall be paid a salary at a rate of more than $5,000 a year."

It was evidently thought that, so far as salaries were concerned, this was superseded by the Classification Act of 1923, but that the combined effect of paragraphs (b) and (c) was to limit the number of persons appointable without regard to the civil service regulations to four, and that this limitation was not superseded.

A provision of Act July 31, 1894, c. 174, § 1, 28 Stat. 173, requiring law clerks in the offices of the Comptroller of the Treasury and the several Auditors to be skilled in the law, and appointed in the same manner as chiefs of division may have been omitted from the Code as obsolete, and superseded, so far as it related to appointments, by subdivision (a) of this section.

R. S. § 279, authorizing the second Auditor to detail a clerk to sign certificates and papers under laws relating to bounties, but making the Auditor responsible for such clerk's acts, and Act March 2, 1895, c. 177, § 1, 28 Stat. 776, 777, so far as it authorized the Chief Clerk in the office of the Comptroller of the Treasury to sign such letters and papers as the Comptroller might direct, required law clerks in the offices of the Comptroller of the Treasury and the Auditors to perform clerical duties, and authorized the secretary of the Treasury to delegate to any officer not below the grade of fourth class clerk authority to perform the duties of deputy auditor in case of sickness or absence of the deputy auditor, were probably omitted from the Code as obsolete, or superseded by subdivision (d) of this section.

Act July 31, 1894, c. 174, § 4, 28 Stat. 205, requiring the chief clerk to perform such duties as might be assigned to him by the Comptroller of the Treasury, and giving him power to countersign warrants except accountable warrants, Act March 4, 1909, c. 297, § 1, 35 Stat. 866, authorizing the designation of employees in the office of the Auditor for the Post Office Department to countersign warrants and drafts, and Act July 3, 1918, c. 130, § 1, 40 Stat. 758, authorizing the Chief Clerk in the office of the Comptroller of the Treasury to sign all classes of warrants, were probably omitted as obsolete, or superseded by subdivision (d) of this section, or section 56 of this title.

Notes of Decisions

1. **Appointment of law clerks.**—Appointments of law clerks were not made subject to competitive examination by the provisions for performance by them of clerical duties of Act March 2, 1895, § 1 (superseded). (1895) 21 Op. Atty. Gen. 187.

§ 53. **Investigations and reports by Comptroller General.** (a) The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settle-

ment of accounts and concerning such other matters relating to the receipt, disbursement, and application of public funds as he may think advisable. In such regular report, or in special reports at any time when Congress is in session, he shall make recommendations looking to greater economy or efficiency in public expenditures.

(b) He shall make such investigations and reports as shall be ordered by either House of Congress or by any committee of either House having jurisdiction over revenue, appropriations, or expenditures. The Comptroller General shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.

(c) The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.

(d) He shall submit to Congress reports upon the adequacy and effectiveness of the administrative examination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.

(e) He shall furnish such information relating to expenditures and accounting to the Bureau of the Budget as it may request from time to time. (June 10, 1921, c. 18, § 312, 42 Stat. 25.)

§ 54. Information furnished to Comptroller General by departments and establishments. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 107 of this title. (June 10, 1921, c. 18, § 313, 42 Stat. 26.)

Historical Note

This section superseded a provision in Act Feb. 19, 1897, c. 265, § 1, 29 Stat. 550, that all books, papers, and other matters relating to the office or accounts of disbursing officers of the Departments, and commissions, boards, and establishments of the Government in the District of Columbia, should be subject to inspection, and examination by the Comptroller of the Treasury, and the Auditor authorized to settle such accounts, or the duly authorized agents of either; and also a somewhat similar provision in Act March 15, 1898, c. 68, § 5, 30 Stat. 316.

Notes of Decisions

1. Bids and contracts.—Requirement by the comptroller general of information from the secretary of war relating to contracts showing that lowest bid was accepted or a detailed statement of reasons for accepting other than the lowest bid has been held warranted by this section (1925) 34 Op. Atty. Gen. 446.

§ 55. Eligible register for accountants for General Accounting Office. The Civil Service Commission shall establish an eligible register for accountants for the General Accounting Office, and the examinations of applicants for entrance upon such register shall be

based upon questions approved by the Comptroller General. (June 10, 1921, c. 18, § 314, 42 Stat. 26.)

§ 56. Designation of person to sign warrants. The Comptroller General is authorized to designate such person or persons in his office as may be required from time to time to countersign in his name such classes of warrants as he may direct. (Mar. 4, 1909, c. 297, § 1, 35 Stat. 866; May 29, 1920, c. 214, § 1, 41 Stat. 647; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—The application, to the General Accounting Office, of this section, which, prior to its incorporation into the Code, referred to the Comptroller of the Treasury, has been questioned. Its omission or inclusion is probably a matter of little consequence, however, in view of subdivisions (d) and (e) of section 52 of this title.

Historical Note

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1921, cited in the credit to the text, and prior to its incorporation into the Code, referred to the Comptroller of the Treasury instead of the Comptroller General.

Provision for the designation of employees in the office of the Auditor for the Post Office Department to countersign warrants and drafts, was contained in Act March 4, 1909, c. 297, § 1, 35 Stat. 866, also cited to the text.

The duties and powers of the Comptroller of the Treasury and the Auditor for the Post Office Department (except the administrative examination of accounts and vouchers) were transferred to the General Accounting Office, which is under the direction and control of the Comptroller General, by Act June 10, 1921, c. 18, § 304, 42 Stat. 24, last cited to the text.

R. S. § 275 authorized the Second Comptroller to detail one clerk to sign certificates and papers relating to bounties. It was repealed by Act July 31, 1894, c. 174, § 7, subd. 3, 28 Stat. 206.

See, also, historical note to section 52 of this title.

§ 58. Leaves of absence; piece-rate employees. Under such rules and regulations as may be provided, piece-rate employees in the General Accounting Office and the Bureau of Accounts of the Post Office Department shall be entitled to the same leave of absence with pay as is provided for clerks and employees in the executive departments by sections 29 and 30* of Title 5. The pay of any piece-rate employee during such leave shall be determined by the average quantity of work done by such employee and the pay therefor. (Mar. 4, 1913, c. 142, § 1, 37 Stat. 754; June 10, 1921, c. 18, §§ 304, 310, 42 Stat. 24, 25.)

* "Sections 29 and 30" should probably be "section 30," as no provisions concerning leave of absence are contained in section 29.

Editorial comment.—The application to the General Accounting Office of the provision incorporated in this section has been questioned.

Historical Note

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1914, first cited in the credit to the text.

Prior to its incorporation into the Code, it referred to employees in the Office of the Auditor for the Post Office Department, and provided for leaves of absence as provided in Act March 3, 1893, c. 211, § 5, 27 Stat. 715; Act March 15, 1898, c. 68, § 7, 30 Stat. 316; Act July 7, 1898, c. 571, § 1, 30 Stat. 653, and Act Feb. 24, 1899, c. 187, § 4, 30 Stat. 653. The office of Auditor for the Post Office Department was abolished and the powers and duties of the Auditor were transferred to the General Accounting Office and Bureau of Accounts of the Post Office Department, by Act June 10, 1921, c. 18, §§ 304, 310, 42 Stat. 24, 25.

The provisions mentioned in the original text, for leave of absence for clerks and employees in the executive departments, of Act March 3, 1893, c. 211, § 5, 27 Stat. 715, as amended by Act March 15, 1898, c. 68, § 7, 30 Stat. 316, and of Act July 7, 1898, c. 571, § 1, 30 Stat. 653, and Act Feb. 24, 1899, c. 187, § 4, 30 Stat. 890, are incorporated in section 30 of Title 5, Executive Departments and Government Officers and Employees.

CHAPTER 2.—AUDIT AND SETTLEMENT OF ACCOUNTS

Sec.
71. Public accounts to be settled in General Accounting Office.
72. Same; settlement of accounts.
73. Accounts of Post Office Department; duties of General Accounting Office and Bureau of Accounts.
74. Suspension of items; issuance of warrant; preservation of vouchers; decision of questions involving payment.
75. Regulations for carrying out provisions.
76. Requisitions for advances.
77. Charging warrants to appropriation specified.
78. Rendition of current accounts.
79. Transmission of accounts of courts in Alaska to Department of Justice.
80. Administrative examination of accounts of Army expenditures.
81. Transmission of accounts of marshals.
82. Administrative examination of accounts.
83. Administrative audit of accounts under Department of Justice.
84. Rendition of accounts of officers of courts.
85. Transmission of accounts of expenditures in Territories to Secretary of Interior.
86. Accounts presented without administrative examination.
87. Papers transmitted with accounts of customs officers.
88. Reexamination of disallowed claims.
89. Property returns by officers.
90. Same; certificate as to lost property.
91. Same; manner of making.
92. Same; regulations.
93. General Accounting Office superintending recovery of debts.
94. Settlement of advance bounties.
95. Settlement of accounts of Army officers.
96. Settlement of overpayments.
97. Claims for arrears of pay and bounty already paid.
98. Same.
99. Affidavits and declarations in bounty cases or claims for back pay; certification of official character and signature of officer taking.
100. Claim agent withholding discharge papers.
101. Evidence of honorable discharge returned to officers and enlisted men.
102. Payment of claims for pay and allowances.
103. Accounts of Departments of War and the Navy.
104. Accounts of paymasters of lost or captured public vessels.
105. Relief of disbursing officers of Navy
106. Disbursements by order of commanding officer of Navy.
107. Settlement of expenses of intercourse with foreign nations.
108. Accounting for appropriations for obtaining information from abroad and at home.
109. Collection of debts due Post Office Department.
110. Suits on postmasters' bonds.
111. Accounts of money-order business.
112. Accounts of expenses of postmasters.
113. Accounts of expenditures of Post Office Department under appropriations.
114. Reports of financial condition of Post Office Department.
115. Compromise of judgments.
116. Papers in suits for delinquencies in Post Office Department.
117. Officers authorized to administer oaths.
118. Oaths in settlement of postal accounts.
119. Allowance of lost checks.
120. Checks issued by Bureau of Pensions, Bureau of War Risk Insurance, and United States Veterans' Bureau, and for payment of salaries and wages; destructions; claims on, barred.

Section 71. Public accounts to be settled in General Accounting Office. All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office. (R. S. § 236; June 10, 1921, c. 18, § 305, 42 Stat. 24.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1817, c. 45, § 2, 3 Stat. 366. It was amended by Act June 10, 1921, c. 18, § 305, last cited in the credit to the text by requiring claims, etc., to be settled and adjusted in the General Accounting Office instead of in the Treasury Department, as required by this section before this amendment.

Act Sept. 24, 1917, c. 56, §§ 12, 13, 40

Stat. 293, 295, relative to the auditing of accounts of the military establishment during the war at places other than the seat of government, were evidently omitted from the Code as temporary and obsolete.

Notes of Decisions

1. Necessity of settlement and adjustment of claims and accounts.
2. Powers of accounting officers in general.
3. Matters subject to settlement in general.
4. Accounts.
5. Unliquidated damages.
6. Conflicting claims.
7. Authority as to judgments against United States.
8. Matters specially referred by act of Congress.
9. Effect of departmental decisions or action.
10. Effect of vouchers given or taken by officers.
11. Deductions and credits in general.
12. Set-off.
13. Limitation of time of presentation.
14. Course of office procedure in general.
15. Conclusiveness of settlement in general.
16. Effect of decision of Comptroller upon other accounting officers.
17. Effect of settlement of account upon rights of parties.
18. Re-opening accounts.
19. Statement of account not an award of arbitrators.
20. Recovery back of money paid on settlement of account.
21. Powers of President.
22. Power of courts.

Historical.—The laws, regulations, and departmental practice concerning settlement of war accounts generally, but more especially of property accounts relating to the Army, from the commencement of the government down to 1871, reviewed. (1871) 13 Op. Atty. Gen. 483.

1. Necessity of settlement and adjustment of claims and accounts.—In a suit by the United States against a depositary of public money for a balance thereof, credits to him for clerk hire cannot be allowed without evidence from the books of the Treasury that a claim for such credits had been presented to the proper officers of the Treasury, and disallowed by them, in whole or in part. U. S. v. Gilmore (Neb. 1869) 7 Wall. 491, 493, 19 L. Ed. 282.

No claim or demand can be paid on presentation at the Treasury, nor until it has been audited and allowed by the accounting officers, and then only in pursuance of an appropriation made by law. Ravesies v. U. S. (1886) 21 Ct. Cl. 243.

Under the requirement of Act March 3, 1817, § 2, re-enacted in this section, the Secretary of War could not be called on to order payment on a claim arising from a contract with the War Department, until a settlement of the account at the Treasury by the proper officer. (1832) 2 Op. Atty Gen. 518.

Under the appropriation by Act Sept. 22, 1888, c. 1027, 25 Stat. 485, for payment for Army transportation to land-grant railroads, "to be adjusted in accordance with the decisions of the Supreme Court," etc., omitting, after the word "adjusted," the words "by the accounting officers," contained in previous similar appropriations, accounts for such transportation could be lawfully paid by an Army quartermaster without previous action thereon by the accounting officers of the Treasury. (1889) 19 Op. Atty. Gen. 264.

2. Powers of accounting officers in general.—A provision of an act of Congress for payment to a State of an amount specified, on account of the 5 per centum fund arising from the sale of public lands in said state, precluded all inquiry on the part of the accounting officers of the Treasury as to the legality and justness of the claim. It was their duty to allow and certify the claim for that amount. (1889) 19 Op. Atty. Gen. 362.

The allotment of the Public Printer's appropriation among the different departments was not within the jurisdiction of the former accounting officers of the Treasury. (1894) 21 Op. Atty. Gen. 4.

An accounting officer has undoubted power to disallow a fee charged by a person who is not an officer and who had no right to perform the services for which he seeks to be paid. (1859) 9 Op. Atty. Gen. 268.

It was not within the province of the former accounting officers of the Treasury, upon learning of any order made by the Commissioner of Pensions to a pension agent for the payment of pensions, to notify such agent of what their decision would be upon his account when rendered. (1888) 19 Op. Atty. Gen. 214.

The order of the Commissioner of Pensions directing a pension agent to withhold from payment installments of a pension, when the pensioner had been drawing two pensions, was within the general jurisdiction of the Commissioner, and was obligatory on the pension agent, and the accounting officers of the Treasury had no power to disallow payments made by the agent pursuant thereto. Id.

Determination as to whether an account may be stated and settlement made on a contract by the government which is not within the authority of an administrative department is placed by law with the general accounting office. (1925) 34 Op. Atty. Gen. 447.

If the secretaries of navy and war can determine from the records the number of airplanes equipped with patents which have been heretofore manufactured, imported or used by the government without payment of royalties and if they are able to agree with the owners of the patents on a reasonable price to be paid as a royalty such understanding may be embodied in an agreement in the nature of an account stated. Id.

The acts of agents of the treasury department in stating and settling accounts of officers and issuing warrants for balances found due were ministerial acts, and it was held that the authority given by law must be strictly and literally pursued. Ex parte Randolph (C. C. Va. 1833) Fed. Cas. No. 11,558.

This section does not authorize the Comptroller General to reaudit and disallow a claim against the United States, previously allowed and settled in the Treasury Department. And it confers no authority on him to arbitrarily withhold, on an ex parte examination, the salary of an officer whose compensation is fixed by law. Dillon v. Gross (D. C. Fla. 1924) 299 F. 851.

The accounting officers cannot inquire into the wisdom, expediency, or necessity of assigning an officer of the Army to a command above that pertaining to his grade, but may inquire whether the order of assignment to higher command was carried into effect according to law, and to what extent the officer performed the service to which he was assigned. Glenn v. U. S. (1902) 37 Ct. Cl. 254.

Where a consul had collected extra wages of the master of a vessel in a foreign port, or requested collection of such extra wages on the arrival of the vessel in the United States, it was not competent for the Secretary of the Treasury or any bureau of the Treasury Department, in the examination of the accounts of the consul, to do anything more than revise the amount of the collection and determine its arithmetical accuracy. (1879) 16 Op. Atty. Gen. 268.

Where an Act of Congress provided that certain accounting officers shall "receive, examine, and consider the justice and validity of" certain claims, and that "the Secretary of the Treasury shall make report of each claim allowed by them, at the commencement of each session of Congress, to the Speaker of the House of Representatives, who shall lay the same before Congress for consideration," such provision constituted the officers, not as arbitrators or quasi-judicial officers to decide upon the liability of the government, but simply as accounting officers to make report upon the claims submitted. Ludington v. U. S. (1879) 15 Ct. Cl. 453.

3. Matters subject to settlement in general.—The claim of the state of Massachusetts for reimbursement of expenses incurred in the payment of state militia called out by the governor, at the request of the military authorities of the United States, to aid in suppressing the "draft riots" in the city of Boston was within the scope of the act of July 27, 1861, 12 Stat. 276, and the supplemental resolution of March 8, 1862, No. 16, 12 Stat. 615, providing for the indemnification of states for expenses incurred in the defense of the United States, and might properly be examined and adjusted by the accounting officers of the Treasury under the provisions thereof. (1890) 19 Op. Atty. Gen. 537.

The power to audit and adjust accounts for expenses of the last sickness and burial of deceased pensioners, under R. S. § 4718 (superseded), belonged solely to the proper accounting officers of the Treasury, by virtue of this section, which was not restricted or qualified by said section 4718, and the Commissioner of Pensions had no authority to audit such accounts. (1882) 17 Op. Atty. Gen. 339, 440.

Claims of mail contractors for one month's extra pay, in cases where their contracts had been annulled and the service discontinued, might be decided by the Postmaster General, or, when he did not decide them, were subject to adjudication and settlement by the Auditor for the Post Office Department. (1850) 5 Op. Atty. Gen. 246.

4. Accounts.—The laws regulating the payment of money from the Treasury in the current business of the government, provide only for the settlement and payment of accounts. An account is something which may be adjusted and liquidated by an arithmetical computation. No law authorizes Treasury officials to allow and pass in accounts a number not the result of arithmetical computation upon a subject within the operation of the mutual part of a contract. Power v. U. S. (1883) 18 Ct. Cl. 263, 275. And see dissenting opinion in McKee v. U. S. (1876) 12 Ct. Cl. 504, 555, reversed on other grounds U. S. v. McKee (1877) 97 U. S. 233, 24 L. Ed. 911.

It is the general duty of the accounting officers of the Treasury, by standing laws, to deal with accounts only, in doing which they are subject to the supervision of some proper head of Department. (1857) 8 Op. Atty. Gen. 293.

5. Unliquidated damages.—Claims for unliquidated damages for breach of contract must frequently be sustained by extraneous proof, having no relation to the subjects of the contract, which are common to both parties, and often involve a broad field of investigation, and require the application of judgment and discretion upon the measure of damages and

the weight of conflicting evidence. The results to be reached in such cases can in no just sense be called an account, and are not committed by law to the control and decision of Treasury accounting officers. Power v. U. S. (1883) 18 Ct. Cl. 263, 275; McClure v. U. S. (1884) 19 Ct. Cl. 173, 179; Dennis v. U. S. (1885) 20 Ct. Cl. 119, 121; Brannen v. U. S. (1885) 20 Ct. Cl. 219, 223; Dennis v. U. S. (1888) 23 Ct. Cl. 324. And see dissenting opinion in McKee v. U. S. (1876) 12 Ct. Cl. 504, 555, reversed on other grounds U. S. v. McKee, (1877) 97 U. S. 233, 24 L. Ed. 911.

The officers of the Executive Departments have no authority to settle and pay claims for unliquidated damages. Dunbar v. U. S. (1884) 19 Ct. Cl. 489, 493; State of Pennsylvania v. U. S. (1901) 36 Ct. Cl. 131, 135.

The accounting officers have jurisdiction of claims for money due on contracts, though the exact amount be not fixed thereby, but not of claims founded on neglect or breach of obligations contrary to the terms of a contract. Dennis v. U. S. (1885) 20 Ct. Cl. 119.

Executive officers have no jurisdiction of claims for unliquidated damages founded on breach of contract; nor have they authority to submit them to arbitration. Brannen v. U. S. (1885) 20 Ct. Cl. 219.

The accounting officers have no authority to adjust the claims of contractors with the government for damages without the special authority of Congress. (1844) 4 Op. Atty. Gen. 327; (1847) 4 Op. Atty. Gen. 627, 630; (1872) 14 Op. Atty. Gen. 24.

In case a contract for services be rescinded by the United States, without malfeasance of the other party, and after the services have been partly performed by him, if he claim unliquidated damages as for breach of contract, the case is beyond the powers of the accounting officers of the Treasury; but if he waived all other claims and elected to take payment as for part performance in discharge of the contract, it was a mere question of account to be passed by the proper Auditor and Comptroller. (1854) 6 Op. Atty. Gen. 496.

The Comptrollers and Auditors of the Treasury had no general authority to award damages as for tort, on contract broken; their jurisdiction was confined to matters of account arising ex contractu or by operation of law. (1854) 6 Op. Atty. Gen. 516.

The authority of the Third Auditor and Second Comptroller to settle claims or accounts of any kind against the United States was derivable solely from legislative enactment. The statutory provisions conferring upon them authority in that regard reviewed, and held that the authority so conferred did not extend to the settlement of any claims or accounts for compensation for damages (whether the damages were sustained by the loss of property or otherwise) other than such as were of the classes specifically described in those provisions. (1875) 15 Op. Atty. Gen. 39.

6. Conflicting claims.—The officers of the Treasury cannot arbitrarily select between contending claimants. People's Trust Co. v. U. S. (1903) 38 Ct. Cl. 359.

It is not the duty of the Treasury Department to investigate the facts and circumstances alleged to exist by a surety to a bond given to the United States, and by him paid, concerning a certain trust fund, in which he claims an interest, created by an assignment of the principal debtor, and which he avers has been applied by the United States to the payment of other bonds of the same debtor. The question belongs to the judiciary. (1831) 2 Op. Atty. Gen. 457, 473.

7. Authority as to judgments against United States.—This section does not apply to judgments of the Court of Claims. As to such judgments the duty of the Secretary of the Treasury is to pay them out of "any general appropriation made by law for the payment and satisfaction of private claims, on presentation" to him "of a copy of said judgment, certified" according to law under section 225 of this title. The secretary has no power whatever to go behind the judgment in his examinations. U. S. v. Jones (Ct. Cl. 1886) 119 U. S. 477, 7 S. Ct. 283, 30 L. Ed. 440.

8. Matters specially referred by act of Congress.—The accounting officers may adopt the report of a committee of Congress upon which a given law was reported and passed for the principles which are to govern in the settlement of accounts under the law. The passage of a bill accompanying a written report may be considered the adoption of that report. (1823) 1 Op. Atty Gen. 597.

Acts of Congress granting relief in special cases, and referring claims to a specified Auditor, were held to confer upon him a jurisdiction exclusive of any other Department; and where said Auditor settled such accounts, his successors were held bound by his decisions. (1849) 5 Op. Atty. Gen. 97.

When by special law, or in reference to any special matter, the authority of the accounting officers of the Treasury was extended beyond the question of accounts to one of unliquidated damages, such officers were not thereby converted into independent courts of law, but still remained executive or administrative officers of a Department. (1857) 8 Op. Atty. Gen. 293.

9. Effect of departmental decisions or action.—The accounting officers of the Treasury did not have the burden of responsibility cast upon them of revising the judgments, correcting the supposed mistakes, or annulling the orders of the heads of departments. U. S. v. Jones

(Dist. Col. 1856) 18 How. 92, 96, 15 L. Ed. 274; U. S. v. Johnston (N. Y. 1888) 8 S. Ct. 446, 454, 124 U. S. 236, 31 L. Ed. 389; Barnett v. U. S. (1880) 16 Ct. Cl. 515, affirmed (1882) 154 U. S. 676, 14 S. Ct. 1211, 26 L. Ed. 909.

Where a navy officer was detached on special duty in France, and a sum of money was transmitted to him by the Secretary of the Navy, to be disbursed for medical attendance, upon himself, and was disbursed according to the orders of the Secretary, the propriety of this act was peculiarly within the Secretary's jurisdiction and discretion, and such officer could not be charged with the amount by the accounting officers of the Treasury Department. U. S. v. Jones (Dist. Col. 1856) 18 How. 92, 94, 15 L. Ed. 274; U. S. v. Jones (C. C. Dist. Col. 1824) Fed. Cas. No. 15,493a.

The entire administration of the system devised by Congress for the collection, during the civil war, of captured and abandoned property within the insurrectionary districts, and its sale thereafter, having been committed to the Secretary of the Treasury, subject to no other restriction than that the expenses charged upon the proceeds of sales be "proper and necessary," and be approved by him, the Secretary's approval of an agent's account including expenses incurred on account of a particular lot of such property, made before the passage of Res. March 31, 1868, 15 Stat. 251, requiring moneys received from such sales to be paid into the Treasury, was conclusive that said expenses were proper and necessary, in the absence of fraud, positive violation of statute, or contravention of public policy. U. S. v. Johnston (N. Y. 1888) 8 S. Ct. 446, 454, 124 U. S. 236, 31 L. Ed. 389.

In the administration of statutes relating to the muster and pay of officers, it was held that the decisions of the War Department should be regarded by the Treasury Department as establishing matters of fact concerning the military relations which existed between the government and the officers. But all questions of law involving financial relations and obligations must be determined by the accounting officers of the Treasury. Parkhurst v. U. S. (1894) 29 Ct. Cl. 399.

The Secretary of the Treasury had no authority to increase an allowance made by the Secretary of the Navy to certain citizens under Act April 26, 1822, c. 36, by adding interest thereto or otherwise. (1823) 1 Op. Atty. Gen. 605.

The claims of mail contractors for one month's extra pay, in cases where their contracts had been annulled and the service discontinued, were to be decided by the Postmaster General, or by the Auditor of the Treasury for the Post Office Department, as prescribed by Act July 2, 1836, superseded by subdivision 5 of section 72 of this title. (1850) 5 Op. Atty. Gen. 246.

The Postmaster General might obtain the opinion of the Attorney General on such claims, yet his decision was equally conclusive, whether in accordance with or against such opinion, where one had been obtained. Id.

The heads of Departments had a rightful authority to direct allowances to be made, or to reject claims for allowances, in settling and adjusting accounts relating to the business of their respective Departments; and it was held that such directions and rejections ought to be conformed to by the Auditors and Comptrollers respectively. (1852) 5 Op. Atty. Gen. 630, 656.

If an accounting officer refuse to comply with the lawful instructions of the head of the proper Department in respect to the settlement of an account, the appropriate ultimate remedy was his removal. (1864) 11 Op. Atty. Gen. 109.

While the Secretary of the Interior was invested by law with exclusive supervisory power over the accounts of United States marshals, his decision of questions connected with the settlement of such accounts was the law of such settlement for the executive department of the government. (1864) 11 Op. Atty. Gen. 129.

The regulations of the Navy concerning payments to administrators of balances due deceased seamen and marines, payments of arrearages claimed under wills, etc., were not applicable to or binding upon the accounting officers of the Treasury Department in the settlement of naval accounts. They extended to and governed only those persons in the naval service. (1880) 16 Op. Atty. Gen. 494.

It was not within the province of the accounting officers of the Treasury to construe the pension laws and give instructions to pension agents as to the payment of pensions. This properly belonged to the Commissioner of Pensions, whose duty it was, under the direction of the Secretary of the Interior, to administer these laws. The certificate and his orders as to its payment were binding upon the Comptroller and Auditor. (1882) 17 Op. Atty. Gen. 339, 340; (1888) 19 Op. Atty. Gen. 214.

The Secretary of the Treasury was not authorized, under this section, nor by a resolution of one house of Congress, to reexamine and audit a claim which under a special act relating thereto, had been examined and settled by the head of another department. (1889) 19 Op. Atty. Gen. 385.

The Treasury Department was bound by the rulings of the Department of the Interior in construing pension appropriation acts. (1891) 20 Op. Atty. Gen. 178.

Where a vessel in the Navy has been unheard from so long that her wreck may

be presumed, the determination by the Secretary of the Navy of the day when the wreck, destruction, or loss shall be deemed to have occurred is binding upon the accounting officers of the Treasury Department in settling the accounts of seamen and others, not officers, borne on the books of the vessel. (1921) 32 Op. Atty.-Gen. 427.

10. Effect of vouchers given or taken by officers.—When an act of Congress directed the accounting officers of the treasury to credit a military officer "with any sum or sums of money paid by him" for certain purposes, "and also the sums of money advanced by him" for certain other purposes, on his producing the proper vouchers, an auditor could not reject certain items for which vouchers were produced, on the ground that they were improperly or erroneously paid. The necessity or propriety of the advances covered by the vouchers was not open to discussion; they were prejudged and determined by Congress. Riley v. U. S. (1865) 1 Ct. Cl. 299.

A voucher given by a public officer, in the regular and ordinary course of his business, for services performed by his order within the scope of his authority and the line of his duty unimpeached, is prima facie evidence of indebtedness on the part of the United States as therein stated. In that respect such vouchers differ from the certified balances made by accounting officers which are not evidence either for or against the Government. McCann v. U. S. (1883) 18 Ct. Cl. 445. And see Salomon v. U. S. (Ct. Cl. 1873) 19 Wall. 17, 20, 22 L. Ed. 46; Parish v. U. S. (1866) 2 Ct. Cl. 341, 344.

A proper voucher is prima facie evidence for the claimant, though the officer was indicted for fraudulently issuing it. Countryman v. U. S. (1886) 21 Ct. Cl. 474.

11. Deductions and credits in general.—Alleged debt due United States on account of overpayments cannot be deducted from army officer's pay under this section and other statutes. McCarl v. Pence (App. D. C. 1927) 18 F.(2d) 809.

Marshals are liable to account to the United States for moneys paid to their deputies on execution, even though the return day of the execution may have passed; and defendants in such execution who shall have paid money on the same after the return day are entitled to be credited at the Treasury for such payments. (1836) 3 Op. Atty. Gen. 78.

The accounting officers cannot allow credits to pursers for public stores destroyed by inevitable accident whilst in their possession, Congress only being competent to grant relief in such cases. (1845) 4 Op. Atty. Gen. 355.

A settlement was made by the accounting officers of the Treasury with F., as assignee of certain parties, for the use and occupation of some buildings by the military authorities, whereupon he was paid the amount allowed. Subsequently another settlement was made with him, as assignee of certain other parties, for the use and occupation of other buildings by the same authorities, wherein, it having in the meantime been ascertained that the allowance on the first settlement was improper, and made in ignorance of a fact which, had the accounting officers been cognizant thereof at the time, would have precluded such allowance, the amount paid as aforesaid was deducted, and only the balance remaining after the deduction allowed. Held that, notwithstanding the claims originally belonged to and were derived by assignment from different persons, it was competent to the accounting officers, under the circumstances, to make such deduction. (1874) 14 Op. Atty. Gen. 412.

12. Set off.—A claim allowed in the Treasury Department cannot be set off by a federal court against a judgment for the United States in an action therein, as the authority to set off claims due to and from the United States is committed by section 227 of this title, to the Secretary of the Treasury. U. S. v. Griswold (D. C. Or. 1887) 30 F. 604.

Under the provisions of this section and section 82 of Title 5, Executive Departments and Government Officers and Employees, and section 227 of this title, the treasury had authority to set off an indebtedness due from a claimant to the government against a judgment recovered by him against the United States. The Schooner Henry (1900) 35 Ct. Cl. 393; Labadie v. U. S. (1898) 33 Ct. Cl. 476; Howes v. U. S. (1889) 24 Ct. Cl. 170; Taggart v. U. S. (1881) 17 Ct. Cl. 322; Bonnafon v. U. S. (1878) 14 Ct. Cl. 484.

From an early day the accounting officers have been accustomed, in the course of settling ordinary accounts in the Treasury Department, to set off one debt against another when a claimant is both debtor and creditor, and that practice has been sustained by judicial determination as legal and proper, without any express statute on the subject. McKnight v. U. S. (1877) 13 Ct. Cl. 292, 306, affirmed (1878) 98 U. S. 179, 25 L. Ed. 115; Bonnafon v. U. S. (1878) 14 Ct. Cl. 484, 489. See Gratiot v. U. S. (Mo. 1841) 15 Pet. 336, 370, 10 L. Ed. 759.

The accounting officers are not authorized to enforce payment in whole or in part, by set-off or otherwise, of a canceled and discharged indebtedness. When Congress has released a collector of internal revenue from liability for a balance due from him as collector, the accounting officers cannot set it off against a balance due to him as disburs-

ing officer. Sauner v. U. S. (1881) 17 Ct. Cl. 39.

The right of set-off, where the government is both debtor and creditor, is founded upon this section, and exists independently of the special enactments of section 82 of Title 5, Executive Departments and Government Officers and Employees, and section 227 of this title. Taggart v. U. S. (1881) 17 Ct. Cl. 322, 327.

The duty of the accounting officers in matters of set-off does not extend beyond the interest of the United States in the matters involved in the settlements. In the absence of statute authority, neither the accounting officers of the treasury nor any other public officers can make the United States agents or trustees for the collection of private debts between citizens, nor make contracts in relation to the taking of security for the payment of debts due to the government, so as to bind the United States, for any breach of the contract by neglect or otherwise. Id.

Where a debtor assigned to the government as collateral security for his debt of $1,119.90 a judgment for $2,000 against a third person to whom the government was indebted in a larger amount, the accounting officers were not bound to collect the whole amount of the judgment and pay the balance to the claimant. Id.

It is the duty of the accounting officers in proper cases to set off one demand against another where the Government is both debtor and creditor of the same party. George Howes & Co. v. U. S. (1889) 24 Ct. Cl. 170.

Where a firm is creditor of and a member debtor to the government, and all the partners acquiesce, the accounting officers may set off the individual indebtedness of the one partner against his share of the claim. Id.

13. Limitation of time of presentation.—The provision of Act March 3, 1845, c. 71, § 4, 5 Stat. 764, which was repealed by Act Aug. 10, 1846, c. 175, § 5, 9 Stat. 97, that no account should be acted upon at the Treasury unless presented within six years from the date of the claim, did not affect applications under a general law for pensions. (1838) 4 Op. Atty. Gen. 366.

Pensions are gratuities, not claims or accounts, within the meaning of the statute; yet when these had been once placed on the pension roll they became claims to semiannual payments, which, if not asserted within six years, could not be audited without the authority of Congress. Id.

14. Course of office procedure in general.—The manner in which accounts and claims against the Government were settled, through the several processes of settlement, examination, and certification, stated. McKnight v. U. S. (1877) 13 Ct. Cl. 292, 299, affirmed (1878) 98 U. S. 179, 25 L. Ed. 115.

The records of the War Department (apart from the opinions and conclusions of the officer having the custody thereof) are the best evidence of an officer's status in the service; but, if the record does not disclose the facts essential to the accounting officers administering the law, they may accept from other sources the necessary competent evidence. Northup v. U. S. (1909) 45 Ct. Cl. 50.

Where, by a private act, the Postmaster General is required to cause to be reexamined the transportation account of a mail contractor, it is to be intended that the same shall be done in the statute routine of the accounting of the Department. (1855) 7 Op. Atty. Gen. 439.

The Secretary of the Treasury cannot legally, by departmental order, change a practice or course of office procedure prescribed by statute for the settlement of accounts. (1888) 19 Op. Atty. Gen. 177.

15. Conclusiveness of settlement in general.—The action of accounting officers of an executive department is not a conclusive determination when the question is brought before a court of justice. U. S. v. Harmon (Me. 1893) 147 U. S. 268, 13 S. Ct. 327, 37 L. Ed. 164.

After the Comptroller had made a final settlement of a claim, the direction of the Secretary of War to have the accounts reexamined by the Quarter-master General had no validity. Baltimore & O. R. Co. v. U. S. (1899) 34 Ct. Cl. 484.

A claim by a state for interest expended to the use of the United States is not so intimately connected with a previous claim for the principal moneys in like manner expended that it can be held to have been settled in the settlement of the principal account. Maine v. U. S. (1901) 36 Ct. Cl. 531.

Settlement, made and fully consummated by officer having power to determine amount due contractor under uncompleted contract with United States, is not open to collateral attack. U. S. v. Fletcher Savings & Trust Co. (1926) 151 N. E. 420, 197 Ind. 527.

The fact that an Appropriation Act directs the payment of such claims as "may be certified to be due by the accounting officers" does not vest in them exclusive jurisdiction. They simply act in their usual capacity of auditing officers, leaving to the claimant, unimpaired, a judicial remedy. Sowle v. U. S. (1903) 38 Ct. Cl. 525.

16. Effect of decision of Comptroller upon other accounting officers.—If the disallowance of a claim by a Comptroller was not opened for fraud, mistake in calculation, or the filing of material new evidence, the decision was final, and the case was res judicata in the Department. Armstrong v. U. S. (1894) 29 Ct. Cl. 148.

17. Effect of settlement of account upon rights of parties.—After a credit has been given by the United States, and the account settled, they cannot open the account and revoke the credit, unless originally given by fraud, imposition, or mistake. U. S. v. Kuhn (C. C. Dist. Col. 1833) Fed. Cas. No. 15,545. And see Ex parte Randolph (C. C. Va. 1833) Fed. Cas. No. 11,558, opinion of Barbour, J.

The allowance of a credit to the assistant quartermaster of the army, for a sum of money turned over by him to an acting regiment quartermaster, for which the latter failed to account, and the settlement of his accounts, did not operate to release the regimental quartermaster from his liability to account for such money. U. S. v. Wade (C. C. Mo. 1896) 75 F. 261.

An adjustment of a claim for back rent and waste by the War Department, disallowed by the auditing officers of the Treasury, bound neither the government nor the party. Lovett v. U. S. (1873) 9 Ct. Cl. 479, reversed on other grounds Bostwick v. U. S. (1876) 94 U. S. 53, 24 L. Ed. 65.

Certificates and orders made previous to the issue of drafts for the payment of claims by the Treasury are mere departmental proceedings, from which parties acquire no new rights. McKnight v. U. S. (1877) 13 Ct. Cl. 292, affirmed (1878) 98 U. S. 179, 25 L. Ed. 115.

Accounts and balances stated and certified by the accounting officers are neither conclusive nor prima facie evidence of the indebtedness of the government, nor can an action be brought upon them. Id.

A suit may be maintained against the government on a Treasury draft issued in payment of an account audited and certified, though the original cause of action is barred. Buffalo Bayou B. & C. R. Co. v. U. S. (1880) 16 Ct. Cl. 238.

The rejection of a claim in whole or in part by the accounting officers leaves the party free to pursue his remedy at law, viz. an action in the Court of Claims, although he may have accepted the portion allowed. Longwill v. U. S. (1881) 17 Ct. Cl. 288.

The only practical effect of the decisions of the accounting officers is to authorize the issue of Treasury warrants when the decisions are in favor of the claimants, and to prevent the issue of warrants when the decisions are adverse to them. Id.

When the accounting officers of the Treasury, in settling the accounts of a disbursing officer of the United States, allowed an alleged payment upon the genuine receipt of the party to which the money purported to have been paid, the latter could not be suffered to claim the money of the government in his own name on the pretense that he gave the receipt without actually receiving the money; and if he were aggrieved his remedy was against the disbursing agent of the government. (1854) 7 Op. Atty. Gen. 40.

Where the accounts of a mail contractor have been fully settled, and no attempt has been made to disturb them for many years, they are conclusive, and no charge can be made against him which ought to have been settled then. (1858) 9 Op. Atty. Gen. 198.

18. Re-opening accounts.—Where the accounts of a disbursing officer of the army, which were duly audited and allowed, were restated by the treasury department nearly 10 years later, and a claim made against the officer for a sum shown to be due from him by the restatement, the burden rested upon the United States to falsify the accounts previously allowed by clear and satisfactory proof. U. S. v. Butler (C. C. Me. 1902) 114 F. 582.

The accounting officers could not open and re-examine cases decided by their predecessors except for fraud, errors of calculation, or newly discovered evidence. Waddell v. U. S. (1890) 25 Ct. Cl. 323; Patterson v. U. S. (1893) 28 Ct. Cl. 321; Cotton v. U. S. (1894) 29 Ct. Cl. 207; State of Maine v. U. S. (1901) 36 Ct. Cl. 531, 553.

The refusal of the Treasury Department to reopen a claim was a final disposition of it. Cotton v. U. S. (1894) 29 Ct. Cl. 207.

A claim once settled by the accounting officers cannot be reviewed because of a subsequent adjudication by the Supreme Court or by the Court of Claims adverse to the ruling of the accounting officers; but if a claim be reopened by the action of the accounting officers, then the decision of either court must be followed in the final disposition of the claim. Blazek v. U. S. (1909) 44 Ct. Cl. 188.

Items of account had once been presented to the accounting officers and rejected, and afterwards to Congress and rejected by that body in part, and the rejected items were again presented to the accounting officers on new proof. Held, that they could not reopen the account nor take any new testimony in respect to those items. (1832) 2 Op. Atty. Gen. 515.

Where Congress directs an account to be opened for a specific purpose, that purpose only can be subserved by so doing. Id.

The accounting officers may take rests and settlements in accounts which are not final settlements and which may be reviewed and corrected whenever errors or false items are found therein; not, however, by reopening or restating previous adjustments, but by making such new entries as shall produce the proper correction. (1834) 2 Op. Atty.-Gen. 625.

And even after accounts were finally closed, so far as the auditors were concerned, there might be cases in which the comptroller or head of the department might be authorized to interfere for the purpose of correcting errors or frauds discovered after the action of the auditor. And still further, although the matter had passed beyond the reach of all the executive officers, the government might be entitled to surcharge and falsify by an appeal to the appropriate remedies furnished by the judicial tribunals. Id.

But accounts of claimants presented for settlement in the ordinary course and under the general laws, and long since examined and finally settled, cannot be reopened and further evidence received in respect to them. Id.

Accounts once closed and settled cannot be opened, except on the principles governing courts of equity in opening decrees. (1836) 3 Op. Atty. Gen. 148.

It is inexpedient for accounting officers in any case, unless thereunto specially directed by act of Congress, to readjudicate upon the items of an account once considered and settled in their offices. (1839) 3 Op. Atty. Gen. 461.

Although it is doubted whether an account which has been finally adjusted, settled, and closed ought to be reopened, a claim which had not been closed, or even finally adjusted, may be settled without violating such a rule. (1840) 3 Op. Atty. Gen. 521.

The provision of Act March 3, 1845, c. 71, § 4, 5 Stat. 764, afterwards repealed by Act Aug. 10, 1846, c. 175, § 5, 9 Stat. 71, that no accounts adjusted by the accounting officers of the Treasury should be reopened without authority of law, with a proviso excepting cases where special acts had been or should be passed for the relief of individuals, established a general rule that adjusted accounts should not be reopened by the executive without authority from the legislative department. (1845) 4 Op. Atty. Gen. 378. See (1845) 4 Op. Atty. Gen. 366, 369, 429.

The proviso excepting from the operation of this general rule cases where special acts were passed for the relief of individuals merely protected them from its prohibition as if the section had never passed. It had no effect to facilitate the reopening of such accounts. (1845) 4 Op. Atty. Gen. 378.

A claimant who appealed to Congress after an unsuccessful application at the Department must abide by his election, whether the result be favorable or otherwise. (1845) 4 Op. Atty. Gen. 429.

When accounts settled at the Treasury are for any lawful cause reopened at the request of a claimant, and to correct errors in his behalf, they are to be considered open for errors in behalf of the government. (1854) 6 Op. Atty. Gen. 576.

Where a final decision has been made by the proper department against one who claims to be a public creditor, such decision cannot be opened after a change has taken place in the head of the department. But a deduction from the pay of a contractor made by the auditor and comptroller of the treasury, merely upon the ex parte recommendation to the Postmaster General, was not a judgment against the contractor. (1857) 9 Op. Atty. Gen. 32.

The accounting officers had no authority in 1850 to reopen the accounts of an officer of the Army without his consent, after they had been finally and conclusively settled by the proper department in 1847, and charge him with a sum of money without notice to him. (1860) 9 Op. Atty. Gen. 505.

Irrespective of the fourth section of the Act March 3, 1845, c. 71, and notwithstanding its repeal by Act Aug. 10, 1846, c 175, § 5, 9 Stat. 97, a settlement of an account by the accounting officers, in pursuance of special statutory authority, which purported to be final, and which, having passed from their hands, had been consummated by payment, could not afterwards be opened and readjusted by them. (1862) 10 Op. Atty. Gen. 231, 253.

The rule applies to the adjustment of an account under a special act of Congress, which, when it purports to be final, cannot be reopened without further special legislation. Id.

An account was adjusted when the proper Auditor and Comptroller had stated and certified the amount due on it, and the head of the department, at the request of the proper officer, had drawn a requisition for that amount, and it had been paid out of the Treasury to the claimant. Id.

Where the account of a Superintendent of Indian Affairs was finally adjusted under a special act of Congress, and the amount allowed duly paid, and the accounting officers afterwards made an additional statement and allowance to the claimant the Secretary of the Interior might lawfully refuse to sign a requisition upon the Treasury for such additional allowance. Id.

No subsequent decision upon a doubtful or controverted question of law, essentially modifying a prevailing rule which was applied to the settlement of an account, would authorize the reopening of it, with a view to a readjustment of it in accordance with such decision. (1868) 12 Op. Atty. Gen. 386, 388.

Where an account has been duly adjusted, settled, and closed by the proper officers, upon a full knowledge of all the facts, and no errors in calculation have

been made, it cannot be reopened without express authority of law. (1868) 12 Op. Atty. Gen. 386, 388; (1882) 17 Op. Atty. Gen. 353; (1885) 18 Op. Atty. Gen. 223.

The prohibition in R. S. § 191, which was repealed by the Dockery Act of July 31, 1894, c. 174, § 8, 28 Stat. 207 (incorporated in part in section 74 of this title), against the changing or modifying by heads of departments of balances certified by the Comptrollers of the Treasury, did not apply to the Comptrollers themselves. (1877) 15 Op. Atty. Gen. 192.

The provision of that section making findings of the Comptrollers "conclusive upon the executive branch of the government" signified only that such findings were not to be revisable by any other officer or officers of that branch of the government. Id.

Whether the Comptrollers were authorized to reopen settlements made by themselves or their predecessors in office depended upon considerations founded on the law independently of the said section; its provisions had no bearing on this subject. Id.

19. Statement of account not an award of arbitrators.—The Comptroller of the Treasury was merely an accounting officer, the agent of one of the parties; he had authority to determine whether the Treasurer should pay a demand in the form and amid the circumstances of its presentation; he was not an arbitrator to settle the rights of both parties. Real Estate Savings Bank of Pittsburgh v. U. S. (1880) 16 Ct. Cl. 335, 350, affirmed (1882) 104 U. S. 728, 26 L. Ed. 908.

An account stated by the accounting officers, showing a balance due to a claimant, does not constitute an award. Mississippi Central R. R. v. U. S. (1888) 23 Ct. Cl. 27; Mumford v. U. S. (1896) 31 Ct. Cl. 210.

20. Recovery back of money paid on settlement of account.—On the settlement by the accounting officers of the Treasury of the account of one who was supposed to be, but was not, an officer of the government, he, announcing that he would not be concluded thereby, and protesting that the allowance was insufficient, received it, and brought suit in the Court of Claims for a balance which he claimed. Held, that the United States was not bound by the settlement, and was entitled to recover as a counterclaim the amount improperly paid to him thereon. McElrath v. U. S. (Ct. Cl. 1880) 102 U. S. 426, 441, 26 L. Ed. 189, affirming (1876) 12 Ct. Cl. 201.

Where a clerk of the circuit court expended money for clerk hire, and the first comptroller of the treasury demanded from the clerk the payment of a specified sum, claiming that he had expended more than was allowed by law, which sum the clerk paid over with full knowledge of all the facts and without duress of any sort, constituting a voluntary payment, the money could not be recovered. Selby v. U. S. (D. C. Mo. 1891) 47 F. 800.

Where the accounting officers of the Treasury, in mistake of law, certified a balance in favor of a party upon a contract or obligation which was invalid, and the party brought a suit founded upon the same contract, the United States might set up as a counterclaim and recover back the money paid on the accounting officers' settlement, ex æquo et bono. McKee v. U. S. (1876) 12 Ct. Cl. 504, reversed on other grounds U. S. v. McKee (1877) 97 U. S. 233, 24 L. Ed. 911.

Where the accounting officers have jurisdiction of a claim, their adjustment, in the absence of fraud or mistake of fact, cannot be attacked after payment, and the money recovered back, because of their mistake of law. Mullett v. U. S. (1886) 21 Ct. Cl. 485, distinguishing McElrath v. U. S. (1876) 12 Ct. Cl. 201, which was affirmed (1880) 102 U. S. 426, 26 L. Ed. 189.

Where the responsible officers of the government give a construction to a statute, upon the faith of which a contractor renders a service and receives his pay, the government cannot subsequently open the transaction and recover back the money upon a different interpretation of the law. Alabama Great Southern R. Co. v. U. S. (1889) 25 Ct. Cl. 30, affirmed (1892) 12 S. Ct. 306, 142 U. S. 615, 35 L. Ed. 1134.

Balances stated by the accounting officers are not conclusive upon the judiciary, and will not preclude the government from recovering back an overpayment made in mistake of fact. Duval v. U. S. (1889) 25 Ct. Cl. 46.

When money is paid after careful consideration by the proper officers of the government upon settlements made by the accounting officers, it cannot be recovered back because paid in mistake of law. Hillborn v. U. S. (1892) 27 Ct. Cl. 547; Yoes v. U. S. (1895) 30 Ct. Cl. 370.

Where a case is merely that of executive officers reviewing the decisions of their predecessors and ascribing to the law a different meaning than their predecessors gave to it, it cannot be held that former payments made to an officer were made in mistake either of fact or law. Patterson v. U. S. (1893) 28 Ct. Cl. 321.

Money paid to a public officer on the settlement of his accounts cannot ordinarily be recovered back; but if he opens the settlement by bringing a suit for compensation, which at the time it was supposed he was not entitled to receive, he opens the whole case, and the United States can maintain a counterclaim for moneys erroneously paid him. Yoes v.

U. S. (1895) 30 Ct. Cl. 370; Yoes v. U. S. (1896) 31 Ct. Cl. 293.

21. Powers of President.—The President is not an auditor or comptroller of accounts, nor the accountant general of the nation; but he may require an accounting officer and other subordinate executive officers to perform the duty imposed on them by statute. (1864) 11 Op. Atty. Gen. 14.

When a private act for the relief of a late superintendent of Indian affairs, directed the accounting officers "to settle with him upon principles of equity and justice," the authority was conferred upon the Secretary of the Interior to determine the principles upon which the account should be adjusted, and it was the duty of the second auditor to audit the account accordingly. The President could not perform the duties of the auditor, nor entertain an appeal to determine a conflict of opinion between the Secretary of the Interior and the auditor, but it was his duty to "take care that the laws are faithfully executed." If the execution of the law in regard to the settlement of the account were frustrated, the appropriate ultimate remedy for the evil was the displacement of the auditor. (1864) 11 Op. Atty. Gen. 108.

22. Power of courts.—A mandamus against United States officers to allow and pay a claim will not be granted. Mississippi v. Durham (Dist. Col. 1885) 4 Mackey 235.

The Circuit Court has not jurisdiction to compel the government, through its executive officers, to account with a master in chancery for whatever balance, on the auditing of his accounts, may be found at any time due to a contractor or other employee of the government; or vice versa, to attach in the hands of the government whatever may at any time, on striking a balance, be due to such employee or contractor. (1841) 3 Op. Atty.-Gen. 667.

§ 72. Same; settlement of accounts. Accounts shall be examined as follows:

First. The General Accounting Office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Treasury and all bureaus and offices under his direction, all accounts relating to the customs service, public debt, internal revenue, Treasurer and designated depositaries, mints and assay offices, Bureau of Engraving and Printing, Coast Guard, Public Health Service, public buildings, Secret Service, and to all other business within the jurisdiction of the Department of the Treasury, and certify the balances arising thereon to the Division of Bookkeeping and Warrants.

Second. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of War and all bureaus and offices under his direction, all accounts relating to the military establishment, armories and arsenals, national cemeteries, fortifications, public buildings and grounds under the Chief of Engineers,* rivers and harbors, the Military Academy, and to all other business within the jurisdiction of the Department of War, and certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of War.

Third. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Interior, and of all bureaus and offices under his direction, and all accounts relating to Army and Navy pensions, Geological Survey, public lands, Indians, Architect of the Capitol, and to all other business within the jurisdiction of the Department of the Interior, and certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of the Interior.

Fourth. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the

Navy, and of all bureaus and offices under his direction, all accounts relating to the Naval Establishment, Marine Corps, Naval Academy, and to all other business within the jurisdiction of the Department of the Navy, and certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of the Navy.

Fifth. The Bureau of Accounts in the Post Office Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Postmaster General and of all bureaus and offices under his direction, all postal and money-order accounts of postmasters, all accounts relating to the transportation of the mails, and to all other business within the jurisdiction of the Post Office Department. The General Accounting Office shall audit the accounts and certify the balances arising thereon to the Postmaster General for accounts of the postal revenue and expenditures therefrom, and to the Division of Bookkeeping and Warrants for other accounts, and send forthwith copies of the certificates in the latter cases to the Postmaster General.

All expenditures in the Postal Savings System shall be audited by the General Accounting Office.

Sixth. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of Commerce, and of all bureaus and offices under his direction, all accounts relating to the Bureau of Lighthouses, Steamboat Inspection Service, Navigation, Alaskan fur-seal fisheries, the National Bureau of Standards, Coast and Geodetic Survey, Patents, Census, Bureau of Fisheries and to all other business within the jurisdiction of the Department of Commerce, and certify the balances arising thereon to the Division of Bookkeeping and Warrants and send forthwith a copy of each certificate to the Secretary of Commerce.

Seventh. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of Labor and of all bureaus and offices under his direction, and all accounts relating to all other business within the jurisdiction of the Department of Labor, and certify the balances arising thereon to the Division of Bookkeeping and Warrants and send forthwith a copy of each certificate to the Secretary of Labor.

Eighth. Said office shall receive and examine all accounts of salaries and incidental expenses of the offices of the Secretary of State, the Attorney General, and the Secretary of Agriculture, and of all bureaus and offices under their direction; all accounts relating to all other business within the jurisdiction of the Departments of State, Justice, and Agriculture; all accounts relating to the Foreign Service, the judiciary, United States courts, judgments of United States courts, Executive Office, Civil Service Commission, Interstate Commerce Commission, District of Columbia, Court of Claims and its judgments, Smithsonian Institution, Territorial governments, the Senate, the House of Representatives, the Public Printer, Library of Congress, Botanic Garden, and accounts of all boards, commissions, and establishments of the Government not within the jurisdiction of any of the executive departments. Said office shall certify the bal-

ances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate, according to the character of the account, to the Secretary of the Senate, Clerk of the House of Representatives, Sergeant at Arms of the House of Representatives, or the chief officer of the executive department, commission, board, or establishment concerned.

(July 31, 1894, c. 174, § 7, 28 Stat. 206; Feb. 14, 1903, c. 552, § 2, 32 Stat. 826; June 17, 1910, c. 301, §§ 4, 13, 36 Stat. 537, 539; Aug. 14, 1912, c. 288, § 1, 37 Stat. 309; Aug. 24, 1912, c. 389, § 10, 37 Stat. 559; Mar. 4, 1913, c. 141, § 2, 37 Stat. 737; Jan. 28, 1915, c. 20, § 1, 38 Stat. 800; Aug. 29, 1916, c. 417, 39 Stat. 601†; June 10, 1921, c. 18, § 304, 42 Stat. 24; May 24, 1924, c. 182, § 1, 43 Stat. 140.)

* The words "under the Chief of Engineers" should probably be "under the Director of Public Buildings and Public Parks of the National Capital." See chapter 1 of Title 40, Public Buildings, Property, and Works.

† "Aug. 29, 1916, c. 417, 39 Stat. 601;" should be omitted.

Historical Note

This section is a combination of Act July 31, 1894, c. 174, § 7, 28 Stat. 206; Act Feb. 14, 1903, c. 552, § 2, 32 Stat. 826; Act March 4, 1913, c. 141, § 2, 37 Stat. 737, and Act Aug. 24, 1912, c. 389, § 10, 37 Stat. 559, all of which, prior to their incorporation into the Code, related to the duties of the different Auditors. The offices of the Auditors were abolished by Act June 10, 1921, c. 18, § 310, 42 Stat. 25, and, by section 304, their duties and powers were transferred to the General Accounting Office, except the administrative examination of the accounts and vouchers of the Postal Service, which was transferred to the Bureau of Accounts of the Post Office Department.

The first subdivision is from the first subdivision of section 7 of the Act of July 31, 1894, c. 174, which related to the duties of the Auditor for the Treasury Department. The words "Treasurer and assistant treasurers" were evidently changed to "Treasurer and designated depositaries" to conform to Act May 29, 1920, c. 241, 41 Stat. 654, repealing laws authorizing assistant treasurers. The words "Revenue Cutter Service, Life Saving Service" were changed to "Coast Guard" to conform to section 1 of Title 14, Coast Guard. The words "Marine Hospital Service" were changed to "Public Health Service" to conform to section 1 of Title 42, The Public Health. The words "Coast and Geodetic Survey," "Light House Board," "Steamboat-Inspection Service, immigration navigation," and "Alaskan fur-seal fisheries" were omitted as superseded by Act Feb. 14, 1903, c. 552, § 2, incorporated in the sixth subdivision, and Act March 4, 1913, c. 141, § 2, incorporated in the seventh subdivision.

The second, third and fourth subdivisions are from the second, third and fourth subdivisions of section 7 of the Act of July 31, 1894, c. 174, which related to the duties of the Auditors for the War, Interior, and Navy Departments, respectively. The word "patents" was omitted from the third subdivision as superseded by an order of the President pursuant to section 602 of Title 5, Executive Departments and Government Officers and Employees, transferring the Patent Office to the Department of Commerce; and the word "census" as superseded by Act Feb. 14, 1903, c. 552, § 2, 32 Stat. 826, incorporated in the sixth subdivision.

The first paragraph of the fifth subdivision is from the sixth subdivision of section 7 of the Act of July 31, 1894, c. 174, which related to the duties of the Auditor for the Post Office Department. A provision of the original text of this subdivision that the further duties of such auditor should continue as defined by law, except as modified by the provisions of that Act, were evidently omitted as obsolete or unnecessary. The second paragraph of this subdivision is from Act Aug. 24, 1912, c. 389, § 10, 37 Stat. 559, which provided for audit of the expenditures referred to by the Auditor for the Post Office Department, and which superseded a similar provision of the postal service appropriation act for the preceding year, Act March 4, 1911, c. 241, § 5, 36 Stat. 1340.

The sixth subdivision is from Act Feb. 14, 1903, c. 552, § 2, 32 Stat. 826, which referred to the Auditor for the state and other Departments. The words "Light House Board" were changed to "Bureau of Lighthouses" to conform to section 711 of Title 33, Navigation and Navigable Waters. The words "Fish Commission" were changed to "Bureau of Fisheries," to conform to the present designation of that bureau (see Act April 29, 1926, c. 195, 44 Stat. 363). The words "Secretary of Commerce and Labor" were changed

to "Secretary of Commerce" to conform to Act March 4, 1913, c. 141, § 1, 37 Stat. 736, and the words "Department of Labor" and "Immigration" were omitted as superseded by that Act (see section 616 of Title 5, Executive Departments and Government Officers and Employees, and the seventh subdivision of this section).

The seventh subdivision is from Act March 4, 1913, c. 141, § 2, 37 Stat. 737, which referred to the Auditor for the State and other Departments.

The eighth subdivision is from the fifth subdivision of section 7 of the Act of July 31, 1894, c. 174, which referred to the Auditor for the State and Other Departments. The words "the diplomatic and consular service" were changed to "the Foreign Service" to conform to section 1 of Title 22, Foreign Relations and Intercourse. The words "Department of Labor" and "Fish Commission" were omitted as superseded by Act Feb. 14, 1903, c. 552, § 2, incorporated in the sixth subdivision, and Act March 4, 1913, c. 141, § 2, incorporated in the seventh subdivision.

A provision following the third subdivision of section 7 of the Act of July 31, 1894, c. 174, omitted here, repealed R. S. §§ 273 and 275, and amended R. S. § 456 (section 14 of Title 43, Public Lands).

Section 7 of the Act of July 31, 1894, c. 174, largely superseded R. S. § 277, specifying the duties of the six auditors.

Act Oct. 22, 1913, c. 32, 38 Stat. 209, contained a provision that the money accounts of the Panama Canal should continue to be audited by the Auditor for the War Department. It was perhaps omitted from the Code as obsolete, or as superseded by section 71 of this title, or unnecessary in view of that section, and the general language of the second and eighth subdivisions of this section.

A previous provision, that the accounts for the Isthmian Canal Commission should be audited by the Auditor for the War Department, of Act Feb. 3, 1905, c. 297, § 1, 33 Stat. 647, was superseded by the discontinuance of said Commission by executive order of the President pursuant to the Panama Canal Act of Aug. 24, 1912, c. 390, § 4, 37 Stat. 561 (section 1305 of Title 48, Territories and Insular Possessions).

A direction to the Commissioner of Agriculture to account and report to the proper accounting officers of the Treasury, in the same manner and at the same times as the heads of executive departments, contained in Act June 16, 1880, c. 252, § 2, 21 Stat. 296, and repeated in Act March 3, 1881, c. 129, § 2, 21 Stat. 385, may be regarded as superseded by the change of the Department of Agriculture to an executive department, by Act Feb. 9, 1889, c. 122, 25 Stat. 659, and the provision for examination of accounts of the Secretary and of the Department by the Auditor for the State and other Departments, in the Dockery Act of July 31, 1894, c. 174, § 7, incorporated in this section.

Cross-References

For provisions of Act Feb. 14, 1903, c. 552, § 2, 32 Stat. 826, and Act March 4, 1913, c. 141, § 2, 37 Stat. 736, see sections 592 to 594, 612 and 614, of Title 5, Executive Departments and Government Officers and Employees.

Nothing in this section is to prevent the General Accounting Office from disallowing claims for arrears of pay and bounty in certain cases. See section 97 of this title.

Contracts requiring the advance of money, or connected with the settlement of public accounts, are required to be deposited in the General Accounting Office by section 20 of Title 41, Public Contracts.

Payment of final judgments and awards rendered against the United States by the Court of Claims, and of final judgments rendered against the United States by the district courts, under appropriations by Congress, is to be made on settlements by the General Accounting Office by section 228 of this title.

The settlement of accounts of deceased officers and enlisted men of the Army, and allowance of the amount found due, without administration, to the decedent's widow or heirs, are authorized by section 868 of Title 10, Army.

The mode of stating balances to be certified for arrears of pay or for bounty to volunteers, and for commutation of rations to prisoners of war and to soldiers on furlough is prescribed by section 98 of this title.

The General Accounting Office is to maintain a complete and permanent record of all unpaid money orders issued by postmasters, by section 731 of Title 39, the Postal Service.

The General Accounting Office is to act as conservator of such part of the estates of citizens of the United States dying abroad as may be received at the Treasury from consuls, etc., by section 75 of Title 22, Foreign Relations and Intercourse.

The General Accounting Office is required to settle certain claims for damages to and loss of private property incident to army operations, by section 223 of this title.

Notes of Decisions

1. Subjects of audit.
2. Revision of settlement.
3. Decisions under R. S. § 277—In general
4. —— Authority of former auditors in general.
5. —— Second auditor.
6. —— Third auditor.

7. —— Fourth auditor.
8. —— Fifth auditor.
9. —— Sixth auditor.
10. —— Powers and duties of Comptroller as to accounts transmitted by Auditors.

See also notes to section 71 of this title.

Historical.—The system of accounting in the Treasury Department in existence before the passage of the Act of July 31, 1894, c. 174 (incorporated in part in this section), was fully explained in 13 Ct. Cl. 292.

History of auditor's office since 1789 discussed, see (1893) 20 Op. Atty. Gen. 677.

1. Subjects of audit.—The accounts of the Interstate Commerce Commission relating to the general railroad contingent fund are subject to audit by the General Accounting Office. (1922) 33 Op. Atty. Gen. 316.

The Columbia Institution for the Deaf and Dumb is in the Department of the Interior, and the accounts of the institution were accounts within the jurisdiction of the former auditor for the Interior Department. (1897) 22 Op. Atty. Gen. 1.

The appropriations relating to the Columbia Institution for the Deaf and Dumb constitute "business within the jurisdiction of the department of the interior" within the meaning of this section. (1896) 21 Op. Atty. Gen. 349.

Moneys received by the Federal Reserve Board, under section 243 of Title 12, Banks and Banking, are "public moneys" within the meaning of the auditing statutes, and consequently were subject to audit by one of the auditors of the Treasury Department, under this section or section 255 of Title 5, Executive Departments and Government Officers and Employees. (1914) 30 Op. Atty. Gen. 308.

2. Revision of settlement.—Under this section and section 8 of Act July 31, 1894, c. 174 (incorporated in part in section 74 of this title), one accepting payment under settlement of auditor is precluded from obtaining revision of settlement. St. Louis, B. & M. Ry. Co. v. U. S. (Ct. Cl. 1925) 45 S. Ct. 472; 268 U. S. 169, 69 L. Ed. 899.

3. Decisions under R. S. § 277—In general.—As to necessity of successive examinations of Auditor and Comptroller and nature and effect of action of each, see (1876) 15 Op. Atty. Gen. 139, 140, 142.

4. —— Authority of former auditors in general.—It was no part of the duties of the Auditors (except the Sixth Auditor) to make decisions binding in any way upon anybody, and their opinions and decisions upon controverted questions, if they chose to give them, had no official determining force. They were only to examine accounts, certify balances, and transmit them to the proper Comptroller for his decision thereon. Ridgway v. U. S. (1883) 18 Ct. Cl. 707; Waters v. U. S. (1886) 21 Ct. Cl. 30, affirmed U. S. v. Waters (1890) 10 S. Ct. 249, 133 U. S. 208; 53 L. Ed. 594; Cotton v. U. S. (1894) 29 Ct. Cl. 207. And see McKnight v. U. S. (1877) 13 Ct. Cl. 292, 299, affirmed (1878) 98 U. S. 179, 25 L. Ed. 115; Thomas v. U. S. (1880) 16 Ct. Cl. 522, 526.

5. —— Second Auditor.—The Second Auditor, not the Commissioner of Pensions, had authority to adjudicate claims for bounties under Act July 22, 1861, c. 9, §§ 5, 6, 12 Stat. 269. (1879) 16 Op. Atty. Gen. 371; (1862) 10 Op. Atty. Gen. 371.

6. —— Third Auditor.—For construction and application of provision concerning accounts for loss of horses and equipment, etc., see Thomas v. U. S. (1880) 16 Ct. Cl. 522; (1858) 9 Op. Atty. Gen. 151; (1882) 17 Op. Atty. Gen. 352; (1868) 12 Op. Atty. Gen. 362.

The Third Auditor had exclusive jurisdiction over accounts and claims for horses and other property destroyed in the military service, under Act Jan. 18, 1837, c. 5. (1842) 4 Op. Atty. Gen. 16.

7. —— Fourth Auditor.—Transcript of the books of the Treasury Department, certified by the Fourth Auditor, as evidence, see U. S. v. Bell (Miss. 1884) 4 S. Ct. 498, 499, 111 U. S. 477, 28 L. Ed. 477.

Necessity of settlement by Fourth Auditor, see (1830) 2 Op. Atty. Gen. 352.

The Fourth Auditor was authorized to examine accounts accruing in the Navy Department, compare the items with the vouchers, allow or reject charges, and state the balance; and the Second Comptroller had authority to revise the action of the Auditor and certify the balances finally found by him. U. S. v. Lynch (Dist. Col. 1890) 11 S. Ct. 114, 116, 137 U. S. 280, 34 L. Ed. 700.

8. —— Fifth Auditor.—The Fifth Auditor was the proper officer to audit accounts of collectors of internal revenue. Soule v. U. S. (Cal. 1879) 100 U. S. 8, 10, 25 L. Ed. 536.

9. —— Sixth Auditor.—Authority to decide upon claims and accounts, and to reject claims in whole or in part, see Longwill v. U. S. (1881) 17 Ct. Cl. 288, 291.

As to accounts which the Sixth Auditor was required to audit, see (1887) 19 Op. Atty. Gen. 30.

As to relation to the Treasury and Post Office Departments, see (1855) 7 Op. Atty. Gen. 439; (1893) 20 Op. Atty. Gen. 677.

Balances certified by the Sixth Auditor for carrying the mails as running accounts, see Duval v. U. S. (1889) 25 Ct. Cl. 46.

10. —— Powers and duties of Comptrollers as to accounts transmitted by Auditors.—The Comptrollers of the Treasury (including the Sixth Auditor and Commissioner of Customs) alone of the ac-

counting officers had authority to reject claims; and it was their duty to exercise this power in cases which they believed to be tainted with fraud, or to which in their judgment a substantial defense at law might be set up. Longwill v. U. S. (1881) 17 Ct. Cl. 288.

A decision by a Comptroller upon a claim properly before him could not be questioned by any other of the accounting officers. A demand after passing him ceased to be a matter of account, and became a liquidated and adjusted demand. (1829) 2 Op. Atty. Gen. 303; (1882) 17 Op. Atty. Gen. 353.

§ 73. Accounts of Post Office Department; duties of General Accounting Office and Bureau of Accounts. The General Accounting Office shall keep and preserve all accounts arising in the Post Office Department or relative thereto and vouchers after settlement. The Bureau of Accounts in the Post Office Department shall close the account of the department quarterly, and transmit to the Secretary of the Treasury quarterly statements of its receipts and expenditures. It shall report to the Postmaster General, when required to do so, the manner and form of keeping and stating the accounts of the department, and the official forms of papers to be used in connection with its receipts and expenditures. It shall report to the Postmaster General all delinquencies of postmasters in rendering their accounts and returns, or in paying over money-order funds and other receipts at their offices. The Comptroller General shall register, charge, and countersign all warrants upon the Treasury for receipts or payments issued by the Postmaster General, when warranted by law. (R. S. § 277; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—It has been suggested that the changes in this section on account of the Act of June 10, 1921, cited in the credit to the text, have not been correctly made, reference perhaps being had to the division of duties as between the General Accounting Office and the Bureau of Accounts. Section 304 of the Act of 1921 transfers the powers and duties of the six auditors, so far as not inconsistent with that act, to the General Accounting Office, but a further provision of the same section transfers the administrative examination of the accounts and vouchers of the Postal Service formerly imposed on the Auditor for the Post Office Department, to the Bureau of Accounts. To determine whether a duty imposed on the Auditor for the Post Office Department constituted a part of the administrative examination of the accounts and vouchers, or one of the duties transferred to the General Accounting Office, is difficult, and some errors may have been made in the many sections formerly referring to such auditor.

Historical Note

This section is from a part of the seventh subdivision of R. S. § 277, which section was derived from Act March 3, 1817, c. 45, § 4, 3 Stat. 366; Act March 3, 1849, c. 108, 9 Stat. 395; Act July 20, 1868, c. 176, § 1, 15 Stat. 106; Act March 3, 1849, c. 129, § 3, 9 Stat. 415; Act July 28, 1866, c. 297, § 8, 14 Stat. 327; Act June 30, 1864, c. 173, § 2, 13 Stat. 223; Act June 8, 1872, c. 335, § 22, 17 Stat. 287.

That section related to the duties of the six auditors. The first six subdivisions and the first sentence of the seventh subdivision were superseded by Act July 31, 1894, c. 174, § 7, 28 Stat. 206 (see section 72 of this title). The last sentence of the seventh subdivision, requiring the Sixth Auditor to perform such other duties as might be assigned to him by the Secretary of the Treasury and make to the Secretary or the Postmaster General such reports as either of them might require was probably omitted as superseded or obsolete.

The provisions carried into this section, prior to their incorporation into the Code, referred to duties of the Sixth Auditor. The Sixth Auditor was designated Auditor for the Post Office Department by Act July 31, 1894, c. 174, § 3, 28 Stat. 205, and by Act June 10, 1921, c. 18, § 304, 42 Stat. 24, his powers and duties were transferred to the General Accounting Office, and a bureau in the Post Office Department to be known as the Bureau of Accounts.

Notes of Decisions

1. Keeping and preserving vouchers.—The Sixth Auditor was to be regarded as an officer of the Treasury Department, and the accounts in his possession which

by this section he was directed to keep and preserve, were regarded as in the Treasury Department, for the purpose of a call for information by the Court of Claims, under R. S. § 1076, (section 272 of Title 28, Judicial Code and Judiciary). (1893) 20 Op. Atty. Gen. 677. See also Bruce v. U. S. (1855) 17 How. 437, 15 L. Ed. 129.

2. Time of closing accounts.—Under the requirement of this section that the Auditor should close the accounts of the Post Office Department quarterly, and the regulations of the Department as to the time of making payments thereon, included in mail contracts, claim for mail transportation pay did not accrue when the service was rendered, but when payment was to be made, and a claim for the one month's extra pay allowed in post office contracts for a discontinued service came under the same provision. Salisbury v. U. S. (1893) 28 Ct. Cl. 404.

All accounts of the post offices, in common with other public accounts, are to be adjusted quarterly, with such vouchers as the Postmaster General may prescribe. (1856) 8 Op. Atty. Gen. 125.

§ 74. Suspension of items; issuance of warrant; preservation of vouchers; decision of questions involving payment. Nothing in this chapter shall prevent the General Accounting Office from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement. The Secretary of the Treasury shall make regulations fixing the time which shall expire before a warrant is issued in payment of an account certified as provided in this section and section 72 of this title.

The General Accounting Office shall preserve, with their vouchers and certificates, all accounts which have been finally adjusted.

Disbursing officers, or the head of any executive department, or other establishment not under any of the executive departments, may apply for and the General Accounting Office shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern said office in passing upon the account containing said disbursement. (July 31, 1894, c. 174, § 8, 28 Stat. 207; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—The changes in this section on account of Act June 10, 1921, c. 18, have been criticized, but it is not apparent how it could be materially improved. The words "this chapter," which are a translation of the words "this Act" in the original text, are not entirely accurate, but do not seem to affect the meaning of the section. The words "this section and" near the end of the first paragraph, might well be omitted, as there are no provisions for the certification of accounts in the present text of the section.

Historical Note

This section was part of the Dockery Act of July 31, 1894, c. 174, cited in the credit to the text.

A provision at the end of this section, omitted here, repealed R. S. §§ 191 and 270. R. S. § 191, so repealed, made settlements of public accounts in the Treasury Department conclusive upon the executive branch of the Government. R. S. § 270, also repealed thereby, authorized an appeal to the First Comptroller from settlements of postal accounts.

Prior to its incorporation into the Code, this section contained further provisions concerning the conclusiveness of balances certified, revision by the Comptroller of the Treasury, and suspension of items of accounts until approval or disapproval by the Comptroller of the Treasury of decisions by Auditors construing statutes. They were probably omitted as superseded by Act June 10, 1921, c. 18, particularly sections 301, 304, and 310.

In the portion of the original text carried into the first paragraph of this section, the words "an Auditor" were changed to "the General Accounting Office" to conform to the Act of June 10, 1921.

In the second paragraph, the words "The Auditors shall, under the direction of the Comptroller of the Treasury," were changed to "the General Accounting Office shall" to conform to the same Act.

In the third paragraph the words "the Comptroller of the Treasury" and "the Auditor and the Comptroller of the Treasury" were changed to "the General Accounting Office" for the same reason.

Notes of Decisions

1. Decisions on questions involving payments to be made.—This section made it obligatory upon the Comptroller of the Treasury to render a decision upon any question involving a payment to be made by or under the head of an Executive Department, and contemplated the construction by him of statutes. (1895) 21 Op. Atty. Gen. 178, 181.

Except in matters of great importance, questions of the character referred to should be submitted to the comptroller, whose opinion is binding and conclusive and affords complete protection. (1895) 21 Op. Atty. Gen. 188; (1897) 21 Op. Atty. Gen. 530; (1899) 22 Op. Atty. Gen. 413, 581; (1899) 23 Op. Atty. Gen. 1, 2; (1900) 23 Op. Atty. Gen. 86; (1901) 23 Op. Atty. Gen. 431, 586; (1902) 24 Op. Atty. Gen. 85; (1903) 24 Op. Atty. Gen. 699.

The authority conferred upon the Comptroller of the Treasury by this section to decide questions involving payments to be made from the Treasury was complete; but this section does not establish a rule which is universal and without exception. Congress did not, by its enactment, intend to shorten the reach of R. S. §§ 354, 356 (sections 303 and 307 of Title 5, Executive Departments and Government Officers and Employees), or to repeal pro tanto those sections. (1904) 25 Op. Atty. Gen. 301.

2. —— Questions to which statute applicable.—The provisions authorizing disbursing officers to submit questions involving payments to be made by them to the Comptroller of the Treasury does not apply to the salary of an officer fixed by law, and for the payment of which an appropriation has been made. Smith v. Jackson (Canal Zone, 1917) 241 F. 747, 154 C. C. A. 449, affirmed (1918) 38 S. Ct. 353, 246 U. S. 388, 62 L. Ed. 788.

"The above-quoted section [this section] places an obligation on the Comptroller of the Treasury (now the Comptroller General) to render a decision upon any question involving a payment to be made by or under the head of any executive department, and contemplates the construction by him of statutes. (1895) 21 Op. Atty. Gen. 178, 181." (1922) 23 Op. Atty. Gen. 265, holding that questions relating to the authority of the Navy Department to make payment of traveling expenses incurred by officer's dependents under section 12 of the Act of May 18, 1920 (section 21 of Title 37, Pay and Allowances), should be submitted to the Comptroller General for an advance opinion rather than to the Attorney General for a legal interpretation of the statute.

To what appropriation an expense is to be charged is a question which may be asked of the Comptroller of the Treasury and should not be answered by the Attorney General. (1896) 21 Op. Atty. Gen. 405.

The allotment of the public printer's appropriation among the different departments was not within the jurisdiction of the accounting officers of the treasury, and the comptroller's opinion thereon could not be given under this section. (1896) 21 Op. Atty. Gen. 423.

3. —— Conclusiveness of decisions.—The Comptroller of the Treasury was charged with the duty of rendering decisions upon questions involving payments to be made by or under the head of an Executive Department, and his decision was final as to all executive officers. (1899) 22 Op. Atty. Gen. 581; (1901) 23 Op. Atty. Gen. 468.

Generally speaking, the decision of the comptroller of the treasury is conclusive in cases involving the application of an appropriation and the expenditure of public moneys, and governs the auditing officers and himself in passing accounts under this section. (1908) 26 Op. Atty. Gen. 609.

The decision of the Comptroller as to whether a retired army officer advanced in rank and pay under the act of April 23, 1904, might be paid at the advanced rate before the Senate had consented to the advancement, was conclusive. (1904) 25 Op. Atty. Gen. 185.

Where disbursing officers, or the heads of executive departments, apply to the Comptroller General, in whom is vested all the power formerly conferred by law upon the Comptroller of the Treasury, for his decision upon any question involving a payment, the decision, when rendered, should govern the case. (1922) 33 Op. Atty. Gen. 268, wherein the Attorney General did not deem it proper to express an opinion as to the pay status of an enlisted man for the period between the time he was discharged from the navy under the judgment of a summary court-martial and the time the judgment was set aside and he was restored to the service, as that question had been decided by the Comptroller General whose decision thereon was final.

4. Opinions by Attorney General.—The opinion of the Attorney General should not be rendered except in matters of great importance. (1899) 23 Op. Atty. Gen. 1, 2; (1900) 23 Op. Atty. Gen. 86; (1901) 23 Op. Atty. Gen. 431, 586; (1899) 22 Op. Atty. Gen. 581; (1895) 21 Op. Atty. Gen. 224; (1896) 21 Op. Atty. Gen. 405.

When Attorney General's opinion binds accounting officers, see (1904) 25 Op. Atty. Gen. 301, as quoted in note to section 303 of Title 5, Executive Departments and Government Officers and Employees.

5. Revision of settlements under former law.—Where the claim of an army officer

for the loss of private property in the service, filed under Act March 3, 1885 (section 218 of this title), was audited, allowed, and paid in the usual manner, the government could not reclaim the money without showing that it was obtained by fraud or paid under a mistake of fact. This section did not authorize the comptroller to take up a claim and revise it of his own motion, ex parte, after it had been paid in the regular course of business, and thereby create a legal demand against the claimant for repayment of the money received, but applied only to claims which were unpaid, and therefore still pending. U. S. v. Olmsted (Iowa, 1902) 118 F. 433, 55 C. C. A. 249.

A settlement having been made in 1906, it was too late to reopen it for a revision by the Comptroller of the Treasury upon application made several years thereafter. Hinkley & Powers v. U. S. (1913) 49 Ct. Cl. 148.

6. Effect of acceptance of payment.—Where a claim was presented by a railroad company to the auditor of the War Department for settlement, and the auditor erroneously made a deduction by way of counterclaim, the acceptance of the amount allowed, without protest or appeal to the Comptroller of the Treasury, was not an acquiescence on the part of the railroad, and this section did not bar it from suing for the balance in the Court of Claims. St. Louis, etc., R. Co. v. U. S. (Ct. Cl. 1925) 268 U. S. 169, 45 S. Ct. 472, 69 L. Ed. 899, reversing in part (1924) 59 Ct. Cl. 82.

Where a railroad, for transporting applicants for enlistment in the Army, discharged, retired and furloughed soldiers, and civilian employees of the War Department, rendered its bills at land-grant rates, knowing that according to a ruling of the Comptroller of the Treasury such persons were to be regarded as "troops of the United States" for whose transportation only land-grant rates could be paid by disbursing officers, and accepted payment of its bills on that basis without protest, it was held that, though the Comptroller's ruling was erroneous, the railroad was bound by acquiescence and could not recover the difference between the amount received and the larger amount which it would have been lawfully entitled to charge under its tariff. But it is otherwise where the bills, though rendered at land-grant rates, bore a short form of protest: "Amounts claimed in this bill accepted under protest"; or a form more extended and explanatory; since by these the government officers were sufficiently notified that payment at the lower rates would not be accepted in final settlement. Where, however, the railroad rendered most of its bills with indorsed protests, but a considerable number during the same period without them, as to these latter it was bound by its acceptance of the land-grant rates. Southern Pac. Co. v. U. S. (Ct. Cl. 1925) 268 U. S. 263, 45 S. Ct. 500, 69 L. Ed. 947, reversing (1924) 59 Ct. Cl. 36. To the same effect, see Western Pac. R. Co. v. U. S. (Ct. Cl. 1925) 268 U. S. 271, 45 S. Ct. 503, 69 L. Ed. 951, reversing (1924) 59 Ct. Cl. 67.

Upon the provision in the original text of this section that "any person accepting payment under a settlement by an auditor shall be thereby precluded from obtaining a revision of such settlement as to any items upon which payment is accepted," the court said: "There is no language in the act indicating that it was the intention of Congress to thereby deprive a claimant of his right to sue in this court, and unless the acceptance by the claimant of a less sum than that claimed was by way of accord and satisfaction, his right to sue in this court is open under the Act March 3, 1887, 24 Stat. 503 [section 250 of Title 28, Judicial Code and Judiciary]. The acceptance by the claimant of a less sum, in the absence of a bona fide dispute, than that claimed, and receipting only for the amount received, does not estop him from asserting in this court his right to the residue of his claim." Finney v. U. S. (1897) 32 Ct. Cl. 546. See Bogert v. U. S. (1866) 2 Ct. Cl. 159.

Where bill was rendered and paid under superseded tariff by mutual mistake, railroad might recover additional amount allowed by tariff in effect. Louisville & Nashville R. Co. v. U. S. (1924) 59 Ct. Cl. 678.

§ 75. Regulations for carrying out provisions. It shall be the duty of the Secretary of the Treasury to make appropriate rules and regulations for carrying out the provisions of sections 72, 74, 76, 78, 84, 87, 496, 506, and 514 of this title, and for transferring or preserving books, papers, or other property appertaining to any office or branch of business affected by them.

It shall also be the duty of the heads of the several executive departments and of the proper officers of other Government establishments, not within the jurisdiction of any executive department, to make appropriate rules and regulations to secure a proper adminis-

trative examination of all accounts sent to them, as required by section 78 of this title, before their transmission to the General Accounting Office, and for the execution of other requirements of this chapter in so far as the same relate to the several departments or establishments. (July 31, 1894, c. 174, § 22, 28 Stat. 210; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—The first paragraph of this section is probably superseded to some extent by Act June 10, 1921, c. 18, particularly sections 304, 309 and 311 [paragraph (f)]. Perhaps the whole paragraph is now obsolete, and could be omitted. If not, such of the sections enumerated as relate wholly to matters under the General Accounting Office should be omitted, and perhaps the language of the paragraph should be otherwise qualified so as to exclude such matters.

Historical Note

Prior to its incorporation into the Code, the provision of this section as to rules and regulations referred to rules and regulations for carrying out the provisions of that act (Act July 31, 1894, c. 174). So far as it referred to rules and regulations to carry out particular sections of that act, it has been repeated, in connection with such sections, in section 255 of Title 5, Executive Departments and Government Officers and Employees, section 42 of Title 19, Customs Duties, and section 667 of Title 28, Judicial Code and Judiciary.

The second paragraph of this section, prior to its incorporation into the Code, referred to "the Auditors" instead of "the General Accounting Office." The duties of the Auditors are transferred to the General Accounting Office by section 44 of this title. The provisions of such paragraph are, in part, repeated in section 21 of Title 41, Public Contracts.

Notes of Decisions

1. **Effectiveness.**—This section is still in force and indicates that an administrative audit is required by the executive departments and government establishments of all public accounts preliminary to their audit by the General Accounting Office. (1924) 34 Op. Atty. Gen. 83.

2. **Conflict of regulations with statute.**—Army regulation, in attempted compliance with this section, requiring presentation of claims of officers for lost property through War Department, cannot amend or affect requirement of section 222 of this title, that the claim be presented within two years; and presentation to the War Department within two years does not save the claim. Newcomber v. U. S. (1916) 51 Ct. Cl. 408.

3. **Census Bureau.**—The accounts of the Census Bureau were formerly subject to the rules and regulations of the Secretary of the Interior under this section. See Census Office (1899) 22 Op. Atty. Gen. 413.

§ 76. Requisitions for advances. Every requisition for an advance of money, before being acted on by the Secretary of the Treasury, shall be sent to the General Accounting Office for action thereon as required by section 78 of this title.

All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned in the General Accounting Office, and all warrants for the payment of money shall be accompanied either by the certificate, mentioned in section 72 of this title, or by the requisition for advance of money, which certificate or requisition shall specify the particular appropriation to which the same should be charged, instead of being specified on the warrant; and shall also go with the warrant to the Treasurer, who shall return the certificate or requisition to the General Accounting Office, with the date and amount of the draft issued indorsed thereon. Requisitions for the payment of money on all audited accounts, or for covering money into the Treasury, shall not be required. And requisitions for advances of money shall not be countersigned in the General Accounting Office. (July 31, 1894, c. 174, § 11, 28 Stat. 209; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section was part of the Dockery Act of July 31, 1894, c. 174, cited in the credit to the text.

References in the original text to the Auditors or the Comptroller of the Treasury were evidently changed so as to refer to the General Accounting Office, to conform to section 44 of this title.

A provision at the end of this section, omitted here, repealed R. S. § 269, which prescribed the duties of the First Comptroller, and so much of R. S. § 305, as required the Register of the Treasury to record warrants. Said repealed provisions were superseded by those of the Act of July 31, 1894.

Cross-References

A requisition for an advance may be disapproved by the General Accounting Office for delinquency of the officer in rendering his accounts, or for other reasons arising out of the condition of his accounts, by a provision of section 78 of this title.

Notes of Decisions

1. **Payment of claim.**—No claim or demand can be paid on presentation at the Treasury, nor until it has been audited and allowed by the accounting officers, and then only in pursuance of an appropriation made by law. Ravesies v. U. S. (1886) 21 Ct. Cl. 243.

2. **Action on treasury draft.**—An action may be maintained against the government upon a treasury draft not in the claimant's possession, if it was improperly paid at the treasury to a third person without the indorsement or authorization of the payee. Buffalo Bayou, B. & C. R. Co. v. U. S. (1880) 16 Ct. Cl. 238.

§ 77. Charging warrants to appropriation specified. Moneys paid by virtue of such warrants shall be charged to the appropriation so specified in the books of the Secretary of the Treasury and General Accounting Office. (R. S. § 3675; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section is from R. S. § 3675 (Act Sept. 2, 1789, c. 12, § 6, 1 Stat. 67; Act March 3, 1809, c. 28, § 1, 2 Stat. 535), which, prior to its incorporation into the Code, read as follows: "All warrants drawn by the Secretary of the Treasury, upon the Treasurer of the United States, shall specify the particular appropriation to which the same should be charged; and the moneys paid by virtue of such warrants shall, in conformity therewith, be charged to such appropriation in the books of the Secretary, First Comptroller, and Register."

The first clause of that section was superseded by Act July 31, 1894, c. 174, § 11, 28 Stat. 209 (section 76 of this title). So much of the section as required accounts of receipts and expenditures of public money to be kept by the Register was repealed by Act July 31, 1894, c. 174, § 10. The First Comptroller was designated Comptroller of the Treasury by Act July 31, 1894, c. 174, § 4, and his powers and duties were transferred to the General Accounting Office by Act June 10, 1921, c. 18, § 304, cited in the credit to the text.

Cross-References

Detained pay, withheld from monthly pay of enlisted men of the Army in obedience to court-martial sentences, is chargeable, when repaid, to the fund "Pay of the Army" by section 650 of this title.

Transportation of enlisted men, etc., is chargeable to the appropriation "Transportation and recruiting," by section 633 of this title.

§ 78. Rendition of current accounts. Except as otherwise provided by law, all monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate, and shall be transmitted to and received by the General Accounting Office within twenty days of their actual receipt at the proper office in Washington in the case of monthly, and sixty days in the case of quarterly and other accounts. Should there be any delinquency in this regard at the time of the receipt by the General Accounting Office of a requisition for

an advance of money, said office shall disapprove the requisition, which said office may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested; but the Secretary of the Treasury may overrule the General Accounting Office's decision as to the sufficiency of these latter reasons. The Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases, relaxing the requirement of mailing or otherwise sending accounts as aforesaid, within ten or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them. Should there be a delay by the administrative departments beyond the aforesaid twenty or sixty days in transmitting accounts, an order of the President, or, in the event of the absence from the seat of Government or sickness of the President, an order of the Secretary of the Treasury, in the particular case, shall be necessary to authorize the advance of money requested. This section shall not apply to accounts of the postal revenue and expenditures therefrom, which shall be rendered as required by law. (July 31, 1894, c. 174, § 12, 28 Stat. 209; Mar. 2, 1895, c. 177, § 4, 28 Stat. 807; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—It has been suggested that the duties of the Secretary of the Treasury under this section have been transferred, presumably as a result of Act June 10, 1921, c. 18 (chapter 1 of this title).

Historical Note

These provisions were part of section 12 of the Dockery Act of July 31, 1894, c. 174, as amended by Act March 2, 1895, c. 177, § 4, also cited in the credit to the text.

The amendment of this section by Act March 2, 1895, c. 177, § 4, cited above, consisted in the insertion, in the second proviso, of the clause providing that, "in the event of the absence from the seat of Government or sickness of the President, an order of the Secretary of the Treasury" may authorize the advance of money; the section originally enacted having provided only for an order of the President for such purpose.

Further provisions, at the end of this section, omitted here, repealed R. S. §§ 250 and 272, and amended R. S. § 3672, by striking out part thereof.

R. S. § 250, so repealed by this section, empowered the Secretary of the Treasury to require settlements of accounts of public money within the fiscal year or other fixed period. R. S. § 272, also repealed thereby, required a report to Congress by the First Comptroller of officers failing to make settlement.

The provision of R. S. § 3622, stricken therefrom by said amendment, was superseded by provisions of this section.

References in the original text of this section to the Auditor were evidently changed so as to refer to the General Accounting Office, to conform to section 44 of this title.

Cross-References

A further provision of this section, requiring a report to Congress by the Secretary of the Treasury of officers delinquent in rendering accounts or in making payment on settlement of accounts, is set forth, as amended by Act May 28, 1896, c. 252, § 4, 29 Stat. 179, in section 267 of Title 5, Executive Departments and Government Officers and Employees.

Further provisions requiring the administrative examination of accounts to be made as contemplated by this section, and relating to the preparation and examination of vouchers and pay rolls, contained in Act Aug. 23, 1912, c. 350, § 1, 37 Stat. 375, are set forth in section 82 of this title.

Provisions for modifying the requirements as to the time for rendering and transmitting accounts, when, in the opinion of the Attorney-General, it will be impossible for accounts pertaining to the courts in Alaska to be transmitted to the Department of Justice within the time prescribed by law, are contained in section 79 of this title.

The time for the transmission of accounts of marshals and other disbursing officers of the Department of Justice to the Auditor is extended to 80 days by section 81 of this title.

The time for the administrative examination of monthly accounts of expenditures for the Army is extended to 60 days, and in time of war may be extended to 90 days, under section 80 of this title.

Heads of Departments and other officers are required to make regulations to secure a proper administrative examination of accounts, as required by this section, before transmission to the General Accounting Office by section 75 of this title.

Special provisions as to accounts in the customs service are made by sections 42, 47, and 55 of Title 19, Customs Duties.

Distinct accounts, according to the appropriation, of public money, are required by section 498 of this title.

Failure of an officer to render account of public money is declared to be embezzlement, and penalized by section 176 of Title 18, Criminal Code and Criminal Procedure.

The General Accounting Office is to superintend the recovery of debts certified by it to be due to the United States, by section 93 of this title.

Notes of Decisions

1. Jurisdiction of courts.—Act June 27, 1898 (see subdivision 20 of section 41 of Title 28, Judicial Code and Judiciary), repealing so much of Act March 3, 1887, § 2, as conferred on the district court concurrent jurisdiction with the court of claims of actions by United States officers for compensation, and providing that no person should recover in the court of claims for such compensation who had not complied with this section, requiring monthly and quarterly accounts of officers to be sent to the proper authority at Washington within 10 and 20 days, respectively, after the expiration of the period to which they relate did not, though containing no saving clause as to pending suits, apply to such suits. Strong v. U. S. (C. C. Conn. 1899) 93 F. 257.

§ 79. Transmission of accounts of courts in Alaska to Department of Justice. When, in the opinion of the Attorney General, it will be impossible for the accounts of any court official or other person whose accounts pertain to the United States courts in Alaska to be transmitted to the Department of Justice within the period prescribed by law, the Attorney General may modify, as he may deem proper, any requirement of law concerning the time when such accounts shall be rendered and transmitted. (Mar. 3, 1909, c. 269, § 10, 35 Stat. 842.)

Historical Note

This section was part of an act amending an act to provide a government for the Territory of Hawaii, to provide for additional judges, and for other judicial purposes.

§ 80. Administrative examination of accounts of Army expenditures. The time for examination of monthly accounts, covering expenditures from appropriations for the Army, by the bureaus and offices of the War Department, after the date of actual receipt and before transmitting the same to the General Accounting Office, shall be sixty days, and in time of war may be extended to ninety days by the Secretary of the Treasury upon request of the Secretary of War. (Mar. 2, 1901, c. 803, 31 Stat. 910; July 9, 1918, c. 143, subchapter 18, 40 Stat. 892; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—It has been suggested that the duties of the Secretary of the Treasury under this section have been transferred, presumably to the General Accounting Office, as a result of Act June 10, 1921, c. 18 (chapter 1 of this title).

Historical Note

This section, to and including the words "sixty days," is from Act March 2, 1901, c. 803, cited in the credit to the text, and the rest of the section from the Act of July 9, 1918, c. 143, also cited to the text. A reference in the original text to the Auditor for the War Department was changed so as to refer to the General Accounting Office, to conform to section 44 of this title.

A temporary provision for an extension of the time for examination of the accounts referred to in this section, during a period of one year from the passage of the act, was made by Act Dec. 20, 1899, c. 1, 31 Stat. 1.

§ 81. Transmission of accounts of marshals. Accounts of United States marshals and other disbursing officers of the Department of Justice shall be transmitted to the General Accounting Office within eighty days after the date of their receipt in the Department of Justice at Washington, District of Columbia. (Mar. 4, 1907, c. 2918, § 1, 34 Stat. 1360; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This was a provision of the sundry civil appropriation act for the fiscal year 1908, first cited in the credit to the text.

A reference in the original text to the Auditor for the state and other Departments was evidently changed to refer to the General Accounting Office to conform to section 44 of this title.

§ 82. Administrative examination of accounts. Except as otherwise provided, the administrative examination of all public accounts, preliminary to their audit by the General Accounting Office, shall be made as contemplated by section 78 of this title, and all vouchers and pay rolls shall be prepared and examined by and through the administrative heads of divisions and bureaus in the executive departments and not by the disbursing clerks of said departments, except those vouchers prepared outside of Washington prior to August 23, 1912, may continue to be so prepared and the disbursing officers shall make only such examination of vouchers as may be necessary to ascertain whether they represent legal claims against the United States. (Aug. 23, 1912, c. 350, § 1, 37 Stat. 375.)

Historical Note

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1913, cited in the credit to the text.

A reference in the original text to the accounting officers of the Treasury was evidently changed to refer to the General Accounting Office, to conform to section 44 of this title.

Notes of Decisions

1. **Effectiveness and effect.**—This section is still in force and indicates that an administrative audit is required by the executive departments and government establishments of all public accounts preliminary to their audit by the general accounting office. (1924) 34 Op. Atty. Gen. 83.

§ 83. Administrative audit of accounts under Department of Justice. The administrative audit of all expenditures under the control of the Department of Justice shall be made in the Division of Accounts of that department. (Aug. 23, 1912, c. 350, § 1, 37 Stat. 404.)

Historical Note

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1913, cited in the credit to the text.

§ 84. Rendition of accounts of officers of courts. Before transmission to the General Accounting Office, the accounts of district attorneys, assistant attorneys, marshals, commissioners, clerks, and other officers of the courts of the United States, except consular courts, made out and approved as required by law, and accounts relating to prisoners convicted or held for trial in any court of the Unit-

ed States, and all other accounts relating to the business of the Department of Justice or of the courts of the United States other than consular courts, shall be sent with their vouchers to the Attorney General and examined under his supervision. (July 31, 1894, c. 174. § 13, 28 Stat. 210; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This provision was part of section 13 of the Dockery Act of July 31, 1894, cited in the credit to the text.

A reference in the original text to "the Department of the Treasury" was evidently changed to refer to "the General Accounting Office," to conform to section 44 of this title.

Cross-References

The remaining portion of section 13 of the Act of July 31, 1894, relating to payment of salaries of judges, and other officers paid as judges are, is incorporated in section 321 of Title 5, Executive Departments and Government Officers and Employees.

The Attorney General is given general supervisory powers over certain of the accounts mentioned in this section, by section 318 of Title 5, Executive Departments and Government Officers and Employees.

The Attorney General is authorized to modify the requirements concerning the time for rendering and transmitting accounts to the Department, when, in his opinion, it will be impossible for accounts pertaining to the courts in Alaska to be transmitted within the period prescribed by law, by section 79 of this title.

The time for the transmission of accounts of marshals and other disbursing officers of the Department of Justice to the General Accounting Office is fixed by section 81 of this title.

The administrative audit of expenditures under control of the Department of Justice is to be made in the Division of Accounts of that Department, by section 83 of this title.

§ 85. Transmission of accounts of expenditures in Territories to Secretary of Interior. The accounts and vouchers relating to the expenditure of the appropriations for government in the Territories shall be transmitted to the Secretary of the Interior for administrative examination and by him passed to the General Accounting Office. (Mar. 4, 1915, c. 141, § 1, 38 Stat. 1021; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1916, cited in the credit to the text.

A reference in the original text to the "Auditor for the Interior Department" was evidently changed to refer to "the General Accounting Office," to conform to section 44 of this title.

§ 86. Accounts presented without administrative examination. In the case of claims presented to the General Accounting Office which have not had an administrative examination, the Comptroller General shall cause them to be examined by two of his subordinates independently of each other. (July 31, 1894, c. 174, § 14, 28 Stat. 210; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section was part of the Dockery Act of July 31, 1894, cited in the credit to the text.

References in the original text to "an Auditor" and "the auditor" were evidently changed to refer to "the General Accounting Office" and "the Comptroller General" to conform to section 44 of this title.

§ 87. Papers transmitted with accounts of customs officers. It shall be the duty of the collectors of customs and other officers of customs to transmit, with their accounts, to the officers charged with the set-

tlement of their accounts, all such papers, records, or copies thereof relating to their transactions as officers of customs as the Secretary of the Treasury may direct. (July 31, 1894, c. 174, § 20, 28 Stat. 210.)

Editorial comment.—This section may be wholly or partly superseded by Act June 10, 1921, c. 18 (chapter 1 of this title), particularly section 309 (section 49 of this title). But see (1924) 34 Op. Atty. Gen. 311.

Historical Note

This section was part of the Dockery Act cited in the credit to the text.

§ 88. **Reexamination of disallowed claims.** Nothing in this chapter shall be construed to authorize the reexamination and payment of any claim or account which had been disallowed or settled prior to July 31, 1894. (July 31, 1894, c. 174, § 23, 28 Stat. 211.)

Editorial comment.—The words "this chapter," which are a translation of the words "this Act" appearing in the original text, are not entirely accurate, but the inaccuracy does not seem to make any material change in the meaning of the section.

Historical Note

This section was part of the Dockery Act cited in the credit to the text.

§ 89. **Property returns by officers.** Instead of forwarding to the General Accounting Office returns of public property intrusted to the possession of officers or agents, the Quartermaster General, the Surgeon General, the Chief of Engineers, the Chief of Ordnance, the Chief Signal Officer, the Paymaster General of the Navy, the Commissioner of Indian Affairs, or other like chief officers in any department, by, through, or under whom stores, supplies, and other public property are received for distribution, or whose duty it is to receive or examine returns of such property, shall certify to the General Accounting Office, for debiting on the proper account, any charge against any officer or agent intrusted with public property, arising from any loss, accruing by his fault, to the Government as to the property so intrusted to him. (Mar. 29, 1894, c. 49, § 1, 28 Stat. 47; Aug. 24, 1912, c. 391, § 3, 37 Stat. 591; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section and sections 90 to 92 of this title were sections 1–4 of an Act of March 29, 1894, entitled "An act to regulate the making of property returns by officers of the Government," cited above. Section 5 of the act repealed all inconsistent laws.

That act was one of several suggested, in connection with the Dockery Act of July 31, 1894, c. 174, §§ 3–25, by the joint Committee of Congress to inquire into and examine the status of the laws organizing the Executive Departments, authorized by Act March 3, 1893, c. 211, § 1, 27 Stat. 681.

The words "Commissary General of Subsistence" which appeared in the original text of this section following the words "Quartermaster General" were evidently omitted as superseded by Act Aug. 24, 1912, c. 391, § 3, 37 Stat. 591, consolidating the office establishments of the Quartermaster General, Commissary General and Paymaster General, and the Quartermaster's, Subsistence, and Pay Departments of the Army.

The words "proper accounting officers of the Treasury Department" were presumably changed to "General Accounting Office," to conform to section 44 of this title.

Cross-References

Provisions for rendering accounts for administrative examination and transmission thereof to the General Accounting Office are made by section 78 of this title.

Provisions for acceptance of the affidavit of a commanding officer on settlement of military property accounts are made by section 1302 of Title 10, Army.

Provisions for settlement of paymaster's accounts as to property on a lost or captured vessel are made by section 104 of this title.

§ 90. Same; certificate as to lost property. Said certificate shall set forth the condition of such officer's or agent's property returns, that it includes all charges made up to its date and not previously certified, that he has had a reasonable opportunity to be heard and has not been relieved of responsibility; the effect of such certificate, when received, shall be the same as if the facts therein set forth had been ascertained by the General Accounting Office in accounting. (Mar. 29, 1894, c. 49, § 2, 28 Stat. 47; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

The words "accounting officers of the Treasury Department" in the original text of this section, were presumably changed to "General Accounting Office" to conform to section 44 of this title.

See also notes to section 89 of this title.

Notes of Decisions

1. **Effect of certificate under this act.**—A certificate of the proper auditor, authenticated in accordance with R. S. § 886 (section 665 of Title 28, Judicial Code and Judiciary), showing a balance audited against an officer on a certificate made under sections 89 to 92 of this title makes a prima facie case in a suit by the government against him for the value of property unaccounted for, both as to the property and its value, charged at its cost to the government. U. S. v. Du Perow (D. C. Ohio, 1913) 208 F. 895.

§ 91. Same; manner of making. The manner of making property returns to or in any administrative bureau or department, or of ascertaining liability for property, under existing laws and regulations, shall not be affected by sections 89 to 92 of this title, except as provided in section 89 of this title; but in all cases arising as to such property so intrusted the officer or agent shall have an opportunity to relieve himself from liability. (Mar. 29, 1894, c. 49, § 3, 28 Stat. 47.)

Historical Note

See notes to section 89 of this title.

§ 92. Same; regulations. The heads of the several departments are hereby empowered to make and enforce regulations to carry out the provisions of sections 89 to 92 of this title. (Mar. 29, 1894, c. 49, § 4, 28 Stat. 47.)

Historical Note

See notes to section 89 of this title.

§ 93. General Accounting Office superintending recovery of debts. The General Accounting Office shall superintend the recovery of all debts finally certified by it to be due to the United States. (July 31, 1894, c. 174, § 4, 28 Stat. 206; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This provision was part of section 4 of the Dockery act of July 31, 1894, cited in the credit to the text.

Preceding provisions of the section related to the Comptroller and the Auditors and were superseded by the Budget and Accounting Act of 1921 (chapter 1 of this title).

A reference to "the Auditors" in the original text was presumably changed to refer to "the General Accounting Office," to conform to section 44 of this title.

Cross-References

A provision that the General Accounting Office shall superintend the collection of all debts due the Post Office Department is contained in section 109 of this title.

§ 94. Settlement of advance bounties. Any moneys paid by a paymaster in the Army to an enlisted man as an advance bounty shall be allowed in the settlement of the accounts of the paymaster, notwithstanding the discharge of such enlisted man before serving the time required by law to entitle him to payment of such moneys. (R. S. § 280.)

Editorial comment.—This section would seem to be obsolete.

§ 95. Settlement of accounts of Army officers. The General Accounting Office shall audit and settle the accounts of line officers of the Army, to the extent of the pay due them for their services as such, notwithstanding the inability of any such line officer to account for property intrusted to his possession, or to make his monthly reports or returns, if such office shall be satisfied by the affidavit of the officer or otherwise that the inability was caused by the officer's having been a prisoner in the hands of the enemy, or by any accident or casualty of war. (R. S. § 278; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

References in the original text of this section to the "Second Auditor" and "such Auditor" were presumably changed to refer to the "General Accounting Office" and "such office" to conform to section 44 of this title.

Cross-References

Further provisions relating to property returns by officers of lost property are contained in sections 89 to 92 of this title.

§ 96. Settlement of overpayments. The proper accounting officers are authorized, in the settlement of the accounts of the paymasters of the Army, to allow such credits for overpayments made in good faith on public account, since the 14th day of April, 1861, and before the 16th day of March, 1868, as shall appear to them, by such vouchers and testimony as they shall require, to be just. (R. S. § 281.)

Editorial comment.—This section seems to be obsolete.

§ 97. Claims for arrears of pay and bounty already paid. Nothing in section 72 of this title shall be construed to prevent the General Accounting Office from disallowing claims for arrears of pay and bounty in cases where it appears from the records and files of his office that payment in full has already been made to the soldier himself, or to his widow or legal heirs. The action of such office shall be deemed final and conclusive and be subject to revision only by Congress or the proper courts. (July 16, 1892, c. 196, § 1, 27 Stat. 194; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1893, first cited in the credit to the text.

Prior to its incorporation into the Code, it read as follows: "Hereafter nothing in section two hundred and seventy-seven of the Revised Statutes shall be construed as to prevent the Second Auditor of the Treasury from disallowing claims for arrears of pay and bounty in cases where it appears from the records and files of his office that payment in full has already been made to the soldier himself, or to his widow or legal heirs: Provided, That if any person whose claim may be disallowed be dissatisfied with the action of the Auditor, he may, within six months, appeal to the Second Comptroller; otherwise the Auditor's action shall be

deemed final and conclusive and be subject to revision only by Congress or the proper courts."

R. S. § 277, so far as it related to the Second Auditor, was superseded by Act July 31, 1894, c. 174, § 7, 28 Stat. 206, incorporated in section 72 of this title. The Second Auditor was designated Auditor for the War Department by section 3 of that Act. The office of Second Comptroller was abolished and the powers and responsibilities thereof transferred to the Comptroller of the Treasury, by section 4 of the same Act.

By section 304 of the Act of June 10, 1921, c. 18 (section 44 of this title), the powers and duties of the Comptroller of the Treasury and the Auditors were transferred to the General Accounting Office.

§ 98. **Same.** The General Accounting Office in certifying* balances due for arrears of pay of two and three year volunteers, for bounty to volunteers and their widows and legal heirs, for bounty under the Act of July 28, 1866 (14 Stat. 322), and for amounts for commutation of rations to prisoners of war in rebel States, and to soldiers on furlough,† follow the decisions of the United States Supreme Court or of the Court of Claims of the United States after the time for appeal has expired, if no appeal be taken, without regard to former settlements or adjudications by their‡ predecessors. (Mar. 4, 1907, c. 2918, § 1, 34 Stat. 1356; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

* The word "certifying" was "stating" in the original text.
† "shall" should be inserted.
‡ "their" should be "its."

Historical Note

This was a proviso annexed to an appropriation in the sundry civil appropriation act for the fiscal year 1908, first cited in the credit to the text.

A reference in the original text to the accounting officers of the treasury was presumably changed to refer to the General Accounting Office, to conform to section 44 of this title.

Notes of Decisions

1. Claims embraced in and effect of proviso.—This provision which followed the word "Provided" in the Act from which it was taken is not to be treated as distinct and independent legislation, but must be restricted to claims against the United States enumerated in the preceding provision, whether this further provision be regarded technically as a proviso or not. Pennington v. U. S. (1914) 34 S. Ct. 269, 231 U. S. 631, 58 L. Ed. 410, affirming (1913) 48 Ct. Cl. 408.

By this statute, as well as by the rulings of the Supreme Court, the decisions of the Court of Claims, when not appealed from, are made the rules by which the accounting officers are to be guided in like cases. Leigh v. U. S. (1908) 43 Ct. Cl. 374.

§ 99. **Affidavits and declarations in bounty cases or claims for back pay; certification of official character and signature of officer taking.** Any and all affidavits and declarations other than those provided for in section 42 of Title 38 hereafter* made or used in bounty cases, or in claims against the Government for back pay may be taken by any officer authorized to administer oaths for general purposes in the State, city, or county where said officer resides. If such officer has a seal and uses it upon such paper, no certificate of a county clerk, or prothonotary, or clerk of a court shall be necessary. But when declarations, affidavits, and other papers are verified by justices of the peace and other officers duly authorized by law to administer oaths for general persons, but not required by law to have seals, the official character, signature, and term of service of such justice or other officer shall be certified by the clerk of the county or court of record or other proper officer, under the seal of such county or court or public officer, in the department or bureau in which

such papers are to be used; and one such certificate duly filed in such department or bureau, shall be sufficient as to all verifications of such officer during his official term, and all papers heretobefore or hereafter filed shall be subject to this rule. (July 1, 1890, c. 646, 26 Stat. 209; Sept. 1, 1890, No. 43, 26 Stat. 679.)

* As this section has been so changed as not to refer to pension claims, the words "other than those provided for in section 42 of Title 38" are unnecessary, and should be omitted. The word "hereafter" should also be omitted.

Historical Note

The first two sentences of this section are from the Act of July 1, 1890, cited in the credit to the text, which was entitled "An act in relation to oaths in pension and other cases." The second sentence, as originally enacted, contained further provisions concerning cases in which no seal was used. These provisions were superseded by Res. Sept. 1, 1890, No. 43, which amended and construed the Act of July 1, 1890, as stated in the third sentence.

A reference in the original text of the first sentence to pension cases was evidently omitted as superseded by sections 42 and 43 of Title 38, Pensions, Bonuses, and Veterans' Relief.

Notes of Decisions

1. **Notary public.**—Under this section a notary public having authority to administer oaths under the laws of the state may take affidavits to be used in support of an application for the entry of a soldier's additional homestead, and the presentation of false proofs and affidavits, purporting to have been sworn to before a notary in support of such an application, if done willfully and fraudulently, constitutes the offense of presenting false evidence in support of a claim against the United States, within R. S. § 5438 (sections 80 and 82–86 of Title 18, Criminal Code and Criminal Procedure). U. S. v. Lair (D. C. Ark. 1902) 118 F. 98.

2. **Declaration—How and before whom made.**—See (1883) 17 Op. Atty. Gen. 510.

§ 100. Claim agent withholding discharge papers. Any claim agent, attorney, or other person engaged in the collection of claims for pay, bounty, or allowances for any soldier,* or for any commissioned officer of the military† forces, or who may have been a soldier* or officer of the regular or volunteer forces of the United States, and honorably discharged, who shall retain, without the consent of the owner or owners thereof, or shall refuse to deliver or account for the same upon demand duly made by the owner or owners thereof, or by their agent or attorney, the discharge papers of any such soldier* or commissioned officer, which may have been placed in his hands for the purpose of collecting said claims, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by fine not exceeding $500, or by imprisonment not exceeding six months, or both, at the discretion of the court, and shall thereafter be debarred from prosecuting any such claim in any executive department of the Government. (May 21, 1872, c. 178, 17 Stat. 137.)

* It would seem that the omitted words "sailor or marine" and "sailor, marine" should be restored.

† It would seem that the omitted words "or naval" should be restored.

Cross-References

Portions of the original text of this section omitted here are covered by section 130 of Title 38, Pensions, Bonuses and Veterans' Relief, and section 841 of Title 43, Public Lands.

Notes of Decisions

1. **Repeal of statute.**—This act, while impliedly repealed as to land warrants by subsequent legislation, is not repealed as to soldiers' discharges. U. S. v. Webster (D. C. Ind. 1884) 21 F. 187.

§ 101. Evidence of honorable discharge returned to officers and enlisted men. In all cases where it has become necessary for any officer or enlisted man of the Army to file his evidence of honorable discharge from the military service of the United States, to secure the settlement of his accounts, the accounting officer with whom it has been filed shall, upon application by said officer or enlisted man, deliver to him such evidence of honorable discharge; but his accounts shall first be duly settled, and the fact, date, and amount of such settlement shall be clearly written across the face of such evidence of honorable discharge, and attested by the signature of the accounting officer before it is delivered. (R. S. § 282.)

Historical Note

This section of the Revised Statutes was derived from Res. May 4, 1870, No. 42, 16 Stat. 374.

Cross-References

Provisions for the issue of a duplicate of a lost certificate of discharge are contained in section 199 of Title 5, Executive Departments and Government Officers and Employees.

§ 102. Payment of claims for pay and allowances. In the settlement of claims of officers, soldiers, sailors, and marines, or their representatives, and all other claims for pay and allowances covered by paragraphs numbered second and fourth of section 72 of this title presented and filed in which it was the practice on June 6, 1900, to make deductions of attorneys' fees from the amount found due, no deductions of fees for attorneys or agents shall be made, but the draft, check, or warrant for the full amount found due shall be delivered to the payee in person or sent to his bona fide post office address (residence or place of business). (June 6, 1900, c. 791, 31 Stat. 637.)

Historical Note

This was a proviso annexed to an appropriation for arrears of pay, bounty, etc., in the sundry civil appropriation act for the fiscal year 1901, cited in the credit to the text.

Prior to its incorporation into the Code, it referred to "all other claims for pay and allowances within the jurisdiction of the Auditor for the War Department or the Auditor for the Navy Department." The offices of such Auditors were abolished and their powers and duties transferred to the General Accounting Office by Act June 10, 1921, c. 18, §§ 304, 310, 42 Stat. 24, 25.

Prior to that Act, the claims within their jurisdiction were specified in the second and fourth subdivisions or paragraphs of section 7 of the Act of July 31, 1894, 28 Stat. 206 (now the second and fourth subdivisions or paragraphs of section 72 of this title).

Cross-References

Agents or attorneys are forbidden to demand or accept any fee for services in connection with claims for arrears of pay, etc., of any officer or enlisted man of the Regular or Volunteer Armies, during the Civil War, by a provision of section 867 of Title 10, Army.

§ 103. Accounts of Departments of War and the Navy. The General Accounting Office shall keep all accounts of the receipts and expenditures of the public money in regard to the War and Navy Departments, and of all debts due to the United States on moneys advanced relative to those departments*; shall preserve the accounts which shall have been finally adjusted, with their vouchers and

certificates, and record all requisitions drawn by the Secretaries of those departments. Said office shall annually, on the first Monday in November, report to the Secretary of the Treasury the application of the money appropriated for the Department of War and the Department of the Navy, and it shall make such reports concerning the accounts of those departments as the Secretaries of those departments may deem necessary and require. (R. S. § 283; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

* The first clause should read: "The General Accounting Office shall keep all accounts of all debts due to the United States on moneys advanced relative to the War and Navy Departments." See Act July 31, 1894, c. 174, § 10, 28 Stat. 208, repealing this section in part.

Editorial comment.—The application to the General Accounting Office of the provision concerning reports to the Secretary of the Treasury, has been questioned.

Historical Note

This section is from R. S. § 283, which was derived from Act March 3, 1817, c. 45, §§ 5, 6, 3 Stat. 367. Prior to its incorporation into the Code, it read as follows: "The Auditors charged with the examination of the accounts of the Departments of War and of the Navy, shall keep all accounts of receipts and expenditures of the public money in regard to those Departments, and of all debts due to the United States on moneys advanced relative to those Departments; shall receive from the Second Comptroller the accounts which shall have been finally adjusted, and shall preserve such accounts, with their vouchers and certificates, and record all requisitions drawn by the Secretaries of those Departments, the examination of the accounts of which has been assigned to them. They shall annually, on the first Monday in November, severally report to the Secretary of the Treasury the application of the money appropriated for the Department of War and the Department of the Navy, and they shall make such reports on the business assigned to them as the Secretaries of those Departments may deem necessary and require."

The office of Second Comptroller was abolished, and the duties, powers, and responsibilities thereof transferred to the Comptroller of the Treasury, by Act July 31, 1894, c. 174, § 4, 28 Stat. 205. The office of Comptroller of the Treasury, and the offices of the six Auditors were abolished, and the powers and duties thereof (except certain duties of the Auditor for the Post Office Department) transferred to the General Accounting Office, by Act June 10, 1921, c. 18, §§ 301, 304, 310, 42 Stat. 23–25.

Notes of Decisions

1. Final adjustment of account.—When an account has been examined, passed on, and the balance certified, it is "adjusted" within the meaning of this section, as well as section 781 of Title 28, Judicial Code and Judiciary. U. S. v. Pinson (Tenn. 1881) 102 U. S. 548, 551, 26 L. Ed. 226.

2. Final settlement.—When the Secretary of War made a requisition for a balance certified by the second comptroller and the amount so certified was paid to the claimant it was a final settlement so far as the War Department was concerned. Cotton v. U. S. (1894) 29 Ct. Cl. 207.

§ 104. Accounts of paymasters of lost or captured public vessels. In every case of the loss or capture of a vessel belonging to the Navy of the United States, the Comptroller General as to money accounts and the Paymaster General of the Navy as to property accounts are authorized, in the settlement of the accounts of the paymaster of such vessel, to credit him with such portion of the amount of the provisions, clothing, small stores, and money, with which he stands charged on their books, as said officers shall be satisfied was inevitably lost by such capture or loss of a public vessel; and such paymaster shall be fully exonerated by such credit from all liability on account of the provisions, clothing, small stores, and money so proved to have been captured or lost. (R. S. § 284; Feb. 18, 1875, c. 80, § 1, 18 Stat. 317; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section is from R. S. § 284, which was derived from Act March 3, 1847, c. 48, § 6, 9 Stat. 173. That section was amended by Act Feb. 18, 1875, c. 80, § 1, cited in the credits to the text by inserting the word "paymaster," instead of "purser," in the first clause of the section.

Upon its incorporation into the Code, the words "proper accounting officers of the Treasury" were changed to "Comptroller General as to money accounts and the Paymaster General of the Navy as to property accounts," and the words "the books of the Fourth Auditor of the Treasury" to "their books" to conform to sections 44 and 89 of this title. The word "purser" in the last clause, was presumably changed to "paymaster" to agree with the first clause.

§ 105. Relief of disbursing officers of Navy. The General Accounting Office shall relieve any disbursing officer of the Navy charged with responsibility on account of loss or deficiency while in the line of his duty, of Government funds, vouchers, records, or papers, in his charge, where such loss or deficiency occurred without fault or negligence on the part of said officer: *Provided,* That the Secretary of the Navy shall have determined that the officer was in the line of his duty, and the loss or deficiency occurred without fault or negligence on his part. The determination by the Secretary of the Navy of the aforesaid questions shall be conclusive upon the General Accounting Office: *Provided further,* That all cases of relief granted under this authority during any fiscal year shall be reported in detail to the Congress by the Secretary of the Navy. (July 11, 1919, c. 9, 41 Stat. 132.)

Historical Note

This was a provision of the naval appropriation act for the fiscal year 1920 cited in the credit to the text.

References in the original text to the "accounting officers of the treasury" were presumably changed to refer to the "General Accounting Office" to conform to section 44 of this title.

Act April 21, 1922, c. 135, 42 Stat. 497, as amended by Act Feb. 11, 1925, c. 207, 43 Stat. 860, authorized the Comptroller General, within four years from the passage of that act, to relieve disbursing officers or special disbursing agents of the War and Navy Departments from accountability for losses of funds, etc., between April 6, 1917, and November 18, 1921, and to allow credits for payments made in good faith during such period, notwithstanding failure to comply with provisions of law or regulations. It was presumably omitted from the Code as temporary.

Notes of Decisions

1. Construction in general.—This section is a remedial one, and should receive a liberal rather than strict and narrow construction. (1923) 34 Op. Atty. Gen. 5.

2. Retroactive effect.—This section being remedial in character, is to be construed as retroactive authorizing the secretary to make a binding certificate relieving officer of responsibility for deficiency in respect to balance long previously charged against officer, although such charge, by law then in force, was made "final and conclusive upon the executive branch of the government." (1923) 34 Op. Atty. Gen. 5.

3. Losses to which applicable.—This section is not confined to cases of mere "physical loss" of funds; word "deficiency" not being synonymous with loss, and of broader import than physical loss. (1923) 34 Op. Atty. Gen. 5.

This section applies to a "deficiency" due to payments erroneously made to laborers fraudulently carried on yard rolls. Id.

4. Finality of Secretary's action.—The Secretary of the Navy is the sole tribunal to determine whether loss or deficiency of funds occurred in line of duty and without fault or negligence by officer, and error in granting or denying relief can only be corrected by Congress. (1923) 34 Op. Atty. Gen. 5.

Certificate of Secretary of the Navy made under this section, stating that a loss or deficiency charged against an officer occurred without his fault or negligence, and while in line of his duty, is conclusive on accounting officers of the treasury and cannot be disregarded by the Comptroller General on ground that loss or deficiency was shown by judg-

ment of a court martial regularly approved by reviewing authority or on ground that there was no physical loss of funds, but merely an unlawful payment. Id.

§ 106. Disbursements by order of commanding officer of Navy. Every disbursement of public moneys, or disposal of public stores, made by a disbursing officer pursuant to an order of any commanding officer of the Navy, shall be allowed by the General Accounting Office, in the settlement of the accounts of the officer, upon satisfactory evidence of the making of such order, and of the payment of money or disposal of stores in conformity with it; and the commanding officer by whose order such disbursement or disposal was made, shall be held accountable for the same. (R. S. § 285; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section is from R. S. § 285, which was derived from Res. No. 17, of March 3, 1849, 9 Stat. 419.

A reference in the original text to the "proper accounting officers of the Treasury" was presumably changed to refer to the "General Accounting Office," to conform to section 44 of this title.

Notes of Decisions

1. Orders of commanding officers.—Regulation issued by Secretary of Navy, as "order" of "commanding officer," see (1915) 30 Op. Atty. Gen. 376.

§ 107. Settlement of expenses of intercourse with foreign nations. Whenever any sum of money has been or shall be issued, from the Treasury, for the purposes of intercourse or treaty with foreign nations, in pursuance of any law, the President is authorized to cause the same to be duly settled annually with the General Accounting Office, by causing the same to be accounted for, specifically, if the expenditure may, in his judgment, be made public; and by making or causing the Secretary of State to make a certificate of the amount of such expenditure as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (R. S. § 291; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section is from R. S. § 291, which was derived from Act Feb. 9, 1793, c. 4, § 2, 1 Stat. 300.

A reference in the original text to the "proper accounting officers of the Treasury" was presumably changed to refer to the "General Accounting Office" to conform to section 44 of this title.

An appropriation for the fiscal year 1927 to enable the President to meet unforeseen emergencies arising in the Diplomatic and Consular service, etc., to be expended pursuant to the requirement of this section, was contained in Act April 29, 1926, c. 195, 44 Stat. 335. Similar appropriations were contained in prior acts.

§ 108. Accounting for appropriations for obtaining information from abroad and at home. Expenditures by the Department of the Navy from the appropriation for obtaining information from abroad and at home shall be accounted for specifically, if, in the judgment of the Secretary of the Navy, they may be made public, and he shall make a certificate of the amount of such expenditures as he may think it advisable not to specify, and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (Aug. 29, 1916, c. 417, 39 Stat. 557.)

Historical Note

This was a provision of the naval service appropriation act for the fiscal year 1917, cited in the credit to the text.

§ 109. Collection of debts due Post Office Department. The General Accounting Office shall superintend the collection of all debts due the Post Office Department, and all penalties and forfeitures imposed for any violation of the postal laws, and take all such other measures as may be authorized by law to enforce the payment of such debts and the recovery of such penalties and forfeitures. Such office shall also superintend the collection of all penalties and forfeitures arising under other statutes, where such penalties and forfeitures are the consequence of unlawful acts affecting the revenues or property of the Post Office Department. (R. S. § 292; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section is from R. S. § 292, which was derived from Act June 8, 1872, c. 335, § 21, 17 Stat. 287.

A reference in the original text to the "Sixth Auditor" was evidently changed to refer to the "General Accounting Office" to conform to section 44 of this title.

Cross-References

A general provision that the General Accounting Office shall superintend the recovery of all debts certified by them to be due to the United States, is contained in section 93 of this title.

Provision for payment of fees of officers and special counsel employed in prosecuting suits instituted on postmasters' bonds, is made by section 110 of this title.

§ 110. Suits on postmasters' bonds. All fees for United States attorneys, marshals, clerks of courts and special counsel necessarily employed in prosecuting civil suits instituted by the General Accounting Office through the Solicitor of the Treasury against the sureties on the official bonds of late postmasters, as provided for by section 109 of this title, shall be paid from the appropriations for expenses of the United States courts. (Feb. 26, 1896, c. 33, 29 Stat. 25; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—It has been suggested that this section has been largely superseded by sections 557 and 578 of Title 28, Judicial Code and Judiciary.

Historical Note

This was a provision of the urgent deficiency act for the fiscal year 1896, first cited in the credit to the text.

A reference in the original text to the "Auditor for the Post Office Department" was evidently changed to refer to the "General Accounting Office" to conform to section 44 of this title.

§ 111. Accounts of money-order business. The bureau of accounts in the Post Office Department shall keep the accounts of the money-order business separately, and in such manner as to show the number and amount of money orders issued at each office, the number and amount paid, the amount of fees received, and all the expenses of the money-order business. (R. S. § 293; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section is from R. S. § 293, which was derived from Act June 8, 1872, c. 335, § 120, 17 Stat. 299.

A reference in the original text to the "Sixth Auditor" was evidently changed to the "bureau of accounts in the Post Office Department," to conform to section 45 of this title.

§ 112. Accounts of expenses of postmasters. The General Accounting Office shall state and certify quarterly to the Postmaster General an account of the money paid by postmasters out of the receipts of their offices, and pursuant to appropriations, on account of the expenses of the postal service; designating the heads under which such payments were made. (R. S. § 294; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—It has been suggested that the words "General Accounting Office" should be "Bureau of Accounts." See Editorial Comment on section 73 of this title.

Historical Note

This section is from R. S. § 294, which was derived from Act June 8, 1872, c. 335, § 52, 17 Stat. 291.

Prior to its incorporation into the Code, it referred to the "Sixth Auditor," instead of the "General Accounting Office." The Sixth Auditor was designated Auditor for the Post Office Department by Act July 31, 1894, c. 174, § 3, 28 Stat. 205. By Act June 10, 1921, c. 18, §§ 304, 310, 42 Stat. 24, 25, the offices of the Auditors were abolished and the powers and duties thereof transferred to the General Accounting Office, except the administrative examination of the accounts and vouchers of the Postal Service, by the Auditor for the Post Office Department, which was transferred to a bureau in the Post Office Department, to be known as the Bureau of Accounts.

§ 113. Accounts of expenditures of Post Office Department under appropriations. The bureau of accounts in the Post Office Department shall keep the accounts relating to the Post Office Department so as to show the expenditures of the Post Office Department under each item of appropriation provided by law. (Mar. 3, 1875, c. 128, § 4, 18 Stat. 343; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section was part of the postal appropriation act for the fiscal year 1876, cited in the credit to the text.

Prior to its incorporation into the Code, it referred to the "Sixth Auditor" instead of the "bureau of accounts" in the Post Office Department. See the historical note to section 112 of this title as to the Sixth Auditor.

§ 114. Reports of financial condition of Post Office Department. The annual reports of the comptroller of the bureau of accounts in the Post Office Department shall show the financial condition of the Post Office Department at the close of each fiscal year, and be made a part of the Postmaster General's annual report to Congress for that fiscal year. (July 12, 1876, c. 179, § 4, 19 Stat. 80; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section was part of the postal service appropriation act for the fiscal year 1877, first cited in the credit to the text.

The words "Auditor of the Treasury for the Post Office Department" were presumably changed to "comptroller of the bureau of accounts in the Post Office Department" to conform to section 45 of this title.

§ 115. Compromise of judgments. Whenever a judgment is obtained for a debt or damages due the Post Office Department, and it satisfactorily appears that such judgment, or so much thereof as remains unpaid, cannot be collected by due process of law, the General Accounting Office may, with the written consent of the Postmaster General, compromise such judgment, and accept in satisfaction less than the full amount thereof. (R. S. § 295; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This is from R. S. § 295, which was derived from Act of June 8, 1872, c. 335, 17 Stat. 325.

The words "Sixth Auditor" in the original text were evidently changed to "General Accounting Office" to conform to section 45 of this title.

Notes of Decisions

1. **Claims for penalties.**—Under the provisions of the Act of March 3, 1851, § 3, superseded by the provisions in the text, it was held that the auditor of the treasury for the Post Office Department, with the written consent of the Postmaster General, had power to compromise, release, and discharge a claim for a penalty for a violation of the postal laws. (1871) 13 Op. Atty. Gen. 540.

§ 116. Papers in suits for delinquencies in Post Office Department. In case of delinquency of any postmaster, contractor, or other officer, agent, or employee of the Post Office Department, in which suit is brought, the General Accounting Office shall forward to the Department of Justice certified copies of all papers in said office tending to sustain the claim. (R. S. § 296; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This is from R. S. § 296, which was derived from Act June 8, 1872, c. 335, § 311, 17 Stat. 324.

The same change was made as in section 115 of this title.

§ 117. Officers authorized to administer oaths. The proper officers of the General Accounting Office are empowered to administer oaths to witnesses in any case in which they may deem it necessary for the due examination of the accounts with which they shall be charged. (R. S. § 297; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This is from R. S. § 297, which was derived from Act March 3, 1817, c. 45, 3 Stat. 368; Act June 8, 1872, c. 335, 17 Stat. 288.

The words "the several Auditors" appearing in the original text were presumably changed to "the proper officers of the General Accounting Office" to conform to section 44 of this title.

Cross-References

Provisions applicable to all the Departments, as to administration of oaths by officers and clerks, are contained in section 93 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

1. **Requiring oaths.**—Whenever the law makes it the duty of an officer to examine, adjust, and settle claims against the government, he is impliedly given authority to require such claims to be supported by the oaths of witnesses, where the facts necessary to establish them rest on testimony. (1874) 14 Op. Atty.-Gen. 419.

§ 118. Oaths in settlements of postal accounts. Any mayor of a city, justice of the peace, or judge of any court of record in the United States, may administer oaths, in relation to the examination and settlement of the accounts of the Post Office Department and Postal Service. (R. S. § 298; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section is from R. S. § 298, which was derived from Act June 8, 1872, c. 335, 17 Stat. 288.

Prior to its incorporation into the Code, it referred to "the accounts committed to the charge of the Sixth Auditor." The Sixth Auditor was designated Auditor for the Post Office Department by Act July 31, 1894, c. 174, § 3, 28 Stat. 205, and by Act June 10, 1921, c. 18, §§ 304, 310, 42

Stat. 24, 25, the office was abolished and the powers and duties thereof transferred to the General Accounting Office and Bureau of Accounts. The accounts formerly committed to the charge of the Sixth Auditor were those of the Post Office Department and Postal Service.

Notes of Decisions

1. Investigation by Post Office Department.—This section does not cover the administration of an oath in the case of an investigation by the Post Office Department as to the loss of a registered letter. U. S. v. Law (D. C. Va. 1892) 50 F. 915.

§ 119. Allowance of lost checks. Whenever the disbursing officer or agent by whom was issued any check which has been lost, destroyed, or stolen, is dead, or no longer in the service of the United States, the proper accounting officer shall, under such regulations as the Secretary of the Treasury may prescribe, state an account in favor of the owner of such original check for the amount thereof, and charge such amount to the account of such officer or agent: *Provided*, That in case a check drawn by any officer or agent of the Post Office Department is lost, stolen, or destroyed a duplicate thereof may be issued under regulations prescribed by the Postmaster General, as set forth in section 528 of this title. (R. S. §§ 300, 3647; May 27, 1908, c. 206, 35 Stat. 415; Feb. 23, 1909, c. 174, 35 Stat. 644.)

Editorial comment.—The words "the proper accounting officer shall, under such regulations as the Secretary of the Treasury may prescribe," should probably be "The General Accounting Office shall," as the powers and duties of the former accounting officers are transferred to the General Accounting Office, by section 44 of this title, and the provision for regulations by the Secretary of the Treasury seems to be superseded by the provision of that section that the powers and duties so transferred shall be exercised without direction from any other officer.

Historical Note

This section is a combination of R. S. § 300 (Act Feb. 2, 1872, c. 12, §§ 1, 2, 17 Stat. 29) and R. S. § 3647 (Act Feb. 2, 1872, c. 12, § 2, 17 Stat. 29) as amended by Act May 27, 1908, c. 206, 35 Stat. 415, and Act Feb. 23, 1909, c. 174, 35 Stat. 644. The proviso is from section 3647. Section 300 and the portion of section 3647 preceding the proviso were substantially alike. The present text is that of section 300.

See, also, notes to section 528 of this title.

Notes of Decisions

1. Liabilities of sureties of officer, etc.—This section and sections 150 and 151 of this title in relation ot the payment of warrants after three years from issuance, form no part of the contract with the sureties of an officer in arrears, whose salary may be withheld, under section 82 of Title 5, Executive Departments and Government Officers and Employees. Their provisions were not passed to protect sureties, but to better secure the government U. S. v. Potter (C. C. Minn. 1879) Fed. Cas. No. 16,076.

§ 120. Checks issued by Bureau of Pensions, Bureau of War Risk Insurance, and United States Veterans' Bureau, and for payment of salaries and wages; destruction; claims on, barred. The General Accounting Office is hereby authorized to destroy United States Government checks that have been paid six full fiscal years, issued by the Bureau of Pensions for the payment of pensions, by the Bureau of War Risk Insurance and the United States Veterans' Bureau for the payment of military and naval compensation on account of death or disability, and checks for the payment of salaries and wages of officers and employees of the Government of the United States, after all unpaid checks have been listed as outstanding as now required by law, and all claims on account of checks of the foregoing classes

appearing as having been paid shall be barred if not presented to the General Accounting Office within six full fiscal years after the date of payment. (Feb. 13, 1923, c. 72, 42 Stat. 1231.)

Historical Note

This is from the executive office, and independent executive bureaus, boards, commissions, and offices appropriation act for the year 1924, cited in the credit to the text.

CHAPTER 3.—THE TREASURER

Sec.
141. Treasurer.
142. Same; bond.
143. Assistant Treasurer.
144. Same; when may act as Treasurer.
145. Transfer and appointment of employees detailed to office of Treasurer.
146. Divisions of Issue and of Redemption.
147. Treasurer; duties.
148. Same; payment of salaries of Senators, Members, and officers of Congress.
149. Liabilities outstanding three or more years.
150. Vouchers for drafts remaining unpaid.
151. Payment upon presentation of outstanding drafts.
152. Accounts of disbursing officers unchanged for three years.
153. Reports of Treasurer and depositaries.
154. Reports of unpaid checks by General Accounting Office.
155. Restrictions upon Treasurer.

Section 141. Treasurer. There shall be in the Department of the Treasury a Treasurer of the United States, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of $8,000 a year. (R. S. § 301; Mar. 4, 1909, c. 314, § 7, 35 Stat. 1065; Jan. 22, 1925, c. 87, Title I, 43 Stat. 770.*)

* "Jan. 22, 1925, c. 87, Title I, 43 Stat. 770," should be omitted.

Historical Note

This section is R. S. § 301 (Act Sept. 2, 1789, c. 12, § 1, 1 Stat. 65; Act July 23, 1866, c. 208, § 2, 14 Stat. 206) as modified by Act March 4, 1909, c. 314, § 7, cited in the credit to the text.

R. S. § 301 fixed the salary of the Treasurer at $6,500.

The office of Treasurer was continued, with the same salary of $6,500, on the reorganization of the Department by Act March 3, 1875, c. 130, § 2, 18 Stat. 396. Subsequent appropriations for the Treasurer were for a less amount. But his salary was increased to $8,000, by a provision of Act March 4, 1909, c. 314, § 7.

The Act of March 4, 1909, c. 314 was an act fixing the compensation of certain officials in the customs service, etc., the other sections of which are omitted, because superseded by the reorganization of the customs service pursuant to Act Aug. 24, 1912, c. 355, § 1, 37 Stat. 434.

The appropriation for the Treasurer for the fiscal year 1927 was $8,000. See Act March 2, 1926, c. 43, Title I, 44 Stat. 142.

R. S. § 311 required a report by the Treasurer at each session of Congress of his accounts and of the state of the Treasury. It was repealed by Act March 29, 1894, c. 48, 28 Stat. 47.

Cross-References

Unless otherwise specially authorized by law, no money appropriated by any act shall be available for payment to any person receiving more than one salary, when the combined amount of said salaries exceeds $2,000 per annum, with certain exceptions, by sections 58 and 59 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

1. Compensation for performance of duties of former office transferred to Treasurer.—After the abolition of the offices of the Commissioners of the Sinking Fund of the District of Columbia and the transfer of their powers and duties to the Treasurer of the United States, by Act June 11, 1878, c. 180, 20 Stat. 102, he was not enti-

tled, for performing the duties of treasurer of said commissioners, to the salary which had been provided for the commissioner acting as treasurer, by Act March 3, 1875, c. 130, 18 Stat. 376. Wyman v. U. S. (1891) 26 Ct. Cl. 103.

§ 142. Same; bond. The Treasurer shall, before entering upon the duties of his office, give bond, with sufficient sureties, to be approved by the Secretary of the Treasury, in the sum of $150,000, payable to the United States, with condition for the faithful performance of the duties of his office, and for the fidelity of the persons to be by him employed, which bond shall be transmitted to the Secretary of the Treasury for filing. (R. S. § 302; Mar. 2, 1895, c. 177, § 5, 28 Stat. 807.)

Historical Note

This section is from R. S. § 302 (Act Sept. 2, 1789, c. 12, § 4, 1 Stat. 66) as modified by Act March 2, 1895, c. 177, § 5, cited in the credit to the text.

Section 302 required the sureties to be approved by the Secretary of the Treasury and the First Comptroller, and the bond to be lodged in the office of the First Comptroller.

The designation of the First Comptroller was changed to Comptroller of the Treasury, by section 4 of the Dockery Act of July 31, 1894, c. 174, 28 Stat. 205. The duties of the Comptroller in regard to the Treasurer's bond were transferred to the Secretary of the Treasury and the bond was required to be transmitted to such Secretary and filed as he might direct, by Act March 2, 1895, c. 177, § 5.

Notes of Decisions

1. Requisites of bond.—In most cases where official bonds are required, as in this section, the form thereof is tacitly or impliedly left by Congress to be regulated or fixed by the officers by whom the bonds are to be approved. In practice, the form ordinarily made use of is one in which the principal and sureties are jointly and severally bound for the full amount of the penalty. (1885) 18 Op. Atty. Gen. 274, 276.

§ 143. Assistant Treasurer. There shall be in the Department of the Treasury an Assistant Treasurer of the United States, who shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 303.)

Historical Note

This section is from R. S. § 303, which was derived from Act March 3, 1863, c. 89, § 1, 12 Stat. 761; Act June 25, 1864, c. 147, § 2, 13 Stat. 159.

A provision concerning the salary of the Assistant Treasurer was evidently omitted as superseded by the Classification Act of 1923 (chapter 13 of Title 5, Executive Departments and Government Officers and Employees.)

§ 144. Same; when may act as Treasurer. The Treasurer may, in his discretion, and with the consent of the Secretary of the Treasury, authorize the Assistant Treasurer to act in the place and discharge any or all the duties of the Treasurer of the United States; and in the event of the absence or illness of either the Treasurer or the Assistant Treasurer, or both, the Secretary of the Treasury may, on the recommendation of the Treasurer appoint for a term not exceeding thirty days at one time, from among the clerks in the Treasury, any one of said clerks to be Acting Assistant Treasurer during such absence or illness: *Provided, however,* That no such appointment shall be made until the official bond given by the principal of the office shall be made in terms to cover and apply to the acts and defaults of every such person so appointed from time to time. Such acting officer shall, moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct in like

cases of the Assistant Treasurer, for whom he acts. (R. S. § 304; Mar. 31, 1886, c. 41, 24 Stat. 9.)

Historical Note

This section is R. S. § 304 (Act March 3, 1863, c. 89, § 1, 12 Stat. 761) as amended by the Act of March 31, 1886, c. 41, cited in the credit to the text.

As enacted in the Revised Statutes, it contained only the first clause, providing that the Assistant Treasurer might act in place of the Treasurer. The amendment by Act March 31, 1886, c. 41, consisted in the addition of the further provisions.

§ 145. Transfer and appointment of employees detailed to office of Treasurer. The Secretary of the Treasury is authorized to transfer and appoint in the office of the Treasurer of the United States such of the employees, in his discretion, as were employed in said office on July 16, 1914, under details authorized by the Act of March 4, 1913 (Thirty-seventh Statutes, page 755), authorizing employees in the offices of Assistant Treasurers to be detailed in the office of the Treasurer of the United States. (July 16, 1914, c. 141, § 1, 38 Stat. 471.)

Historical Note

This was a provision in the legislative, executive, and judicial appropriation act for the fiscal year 1915, cited in the credit to the text.

§ 146. Divisions of Issue and of Redemption. There shall be in the Treasury Department, as a part of the office of the Treasurer of the United States, divisions to be designated and known as the Division of Issue and the Division of Redemption, to which shall be assigned, respectively, under such regulations as the Secretary of the Treasury may approve, all records and accounts relating to the issue and redemption of United States notes, gold certificates, silver certificates, and currency certificates. There shall be transferred from the accounts of the general fund of the Treasury of the United States, and taken up on the books of said divisions, respectively, accounts relating to the reserve fund for the redemption of United States notes and Treasury notes, the gold coin held against outstanding gold certificates, the United States notes held against outstanding currency certificates, and the silver dollars held against outstanding silver certificates, and each of the funds represented by these accounts shall be used for the redemption of the notes and certificates for which they are respectively pledged, and shall be used for no other purpose, the same being held as trust funds. (Mar. 14, 1900, c. 41, § 4, 31 Stat. 46.)

Historical Note

This section was part of the Parity Act, cited in the credit to the text. Other sections of the act are set forth in chapter 8 of this title.

§ 147. Treasurer; duties. The Treasurer shall receive and keep the moneys of the United States, and disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned in the General Accounting Office, and not otherwise. He shall take receipts for all moneys paid by him, and shall give receipts for all moneys received by him; and all receipts for moneys received by him shall

be indorsed upon warrants signed by the Secretary of the Treasury, without which warrant, so signed, no acknowledgment for money received into the public Treasury shall be valid. He shall render his accounts to the General Accounting Office quarterly, or oftener if required, and shall transmit a copy thereof, when settled, to the Secretary of the Treasury. He shall at all times submit to the Secretary of the Treasury and the General Accounting Office, or either of them, the inspection of the moneys in his hands. (R. S. § 305; July 31, 1894, c. 174, §§ 4, 11, 28 Stat. 205, 209; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section is from R. S. § 305, which was derived from Act Sept. 2, 1789, c. 12, § 4, 1 Stat. 65.

References in the original text to "either Comptroller" and the "First Comptroller" were evidently changed so as to refer to the "General Accounting Office" because of Act July 31, 1894, c. 174, § 4, 28 Stat. 205, abolishing the office of Second Comptroller, and designating the First Comptroller the Comptroller of the Treasury, and Act June 10, 1921, c. 18, § 304, 42 Stat. 24, transferring the powers and duties of the Comptroller of the Treasury to the General Accounting Office.

The words "and recorded by the Register," which preceded the words "and not otherwise" in the original text, were repealed by Act July 31, 1894, c. 174, § 11, 28 Stat. 209.

Cross-References

See section 174 of Title 18, Criminal Code and Criminal Procedure, penalizing the failure of the Treasurer to keep safely all moneys deposited.

Notes of Decisions

1. Judgments of Court of Claims.—The Treasurer "makes no payments of claims or accounts except upon a warrant signed by the Secretary of the Treasury and countersigned by the first comptroller, after having been audited by one of the auditors and favorably decided upon by one of the comptrollers, and recorded in the office of the register or of an auditor.

The judgments of the Court of Claims, even when affirmed by the Supreme Court, and allowances made by the Secretary of the Treasury or other public officer under authority of law, cannot be paid by the Treasurer until they have been subjected to this process of accounting and a warrant drawn 'in pursuance of appropriations made by law.'" Ravesies v. U. S. (1886) 21 Ct. Cl. 243.

2. Suit against Treasury official to establish equitable lien on fund in Treasury.—A suit against Treasury officials to establish an equitable lien for attorney's fees upon a fund in the United States Treasury appropriated by Congress for payment to a specified person, also made a party defendant, in satisfaction of a finding of the Court of Claims, is not one against the United States, since the suit is one to compel the performance of a ministerial duty in which the party complainant has a particular interest. Houston v. Ormes (Dist. Col. 1920) 252 U. S. 469, 40 S. Ct. 369, 64 L. Ed. 667, affirming (1918) 47 App. D. C. 364, wherein the court said: "The principal contention is that, because the object of the suit and the effect of the decree were to control the action of the appellants in the performance of their official duties, the suit was in effect one against the United States. But since the fund in question has been appropriated by act of Congress for payment to a specified person in satisfaction of a finding of the Court of Claims, it is clear that the officials of the Treasury are charged with the ministerial duty to make payment on demand to the person designated. It is settled that in such a case a suit brought by the person entitled to the performance of the duty against the official charged with its performance is not a suit against the government. So it has been declared by this court in many cases relating to state officers. Board of Liquidation v. McComb (La. 1876) 92 U. S. 531, 541, 23 L. Ed. 623; Louisiana v. Jumel (La. 1883) 107 U. S. 711, 727, 2 S. Ct. 128, 27 L. Ed. 448; In re Ayres (Va. 1887) 123 U. S. 443, 506, 8 S. Ct. 164, 31 L. Ed. 216. In Minnesota v. Hitchcock (Minn. 1902) 185 U. S. 373, 386, 22 S. Ct. 650, 655, 46 L. Ed. 954, while holding that a suit against officers of the United States might be in effect a suit against the United States, the court said:

"'Of course, this statement has no reference to and does not include those cases in which officers of the United States are sued, in appropriate form, to compel them to perform some ministerial duty imposed upon them by law, and which they wrongfully neglect or refuse to perform. Such suits would not be deemed suits against the United States within the rule that the government cannot be sued except by

its consent, nor within the rule established in the Ayers Case.' And in Parish v. MacVeagh (Dist. Col. 1909) 214 U. S. 124, 29 S. Ct. 556, 53 L. Ed. 936, the court upheld the right of a claimant, in whose favor an appropriation had been made by Congress, to have a mandamus against the Secretary of the Treasury requiring him to pay the claim. To the same effect, Roberts, Treasurer v. U. S. (Dist. Col. 1900) 176 U. S. 221, 231, 20 S. Ct. 376, 44 L. Ed. 443. In the present case it is conceded, and properly conceded, that payment of the fund in question to the defendant Sanders is a ministerial duty, the performance of which could be compelled by mandamus. But from this it is a necessary consequence that one who has an equitable right in the fund as against Sanders may have relief against the officials of the Treasury through a mandatory writ of injunction, or a receivership which is its equivalent, making Sanders a party so as to bind her and so that the decree may afford a proper acquittance to the government. The practice of bringing suits in equity for this purpose is well established in the courts of the District. Sanborn v. Maxwell (1901) 18 App. D. C. 245; Roberts v. Consaul (1905) 24 App. D. C. 551, 562; Jones v. Rutherford (1905) 26 App. D. C. 114; Parish v. McGowan (1912) 39 App. D. C. 184, reversed McGowan v. Parish (Dist. Col. 1915) 237 U. S. 285, 295, 35 S. Ct. 543, 59 L. Ed. 955. Confined, as it necessarily must be, to cases where the officials of the government have only a ministerial duty to perform, and one in which the party complainant has a particular interest, the practice is a convenient one, well supported by both principle and precedent."

Treasury officials joined with a nonresident claimant as defendants in a suit to establish an equitable lien for attorney's fees upon a fund in the United States Treasury appropriated by Congress to pay claimant, conformably to a finding of the Court of Claims, may not successfully challenge the jurisdiction of the District of Columbia courts on the ground that debts due from the United States have no situs in the District, where claimant voluntarily appeared and answered the bill without objection, since the decree will bind her, and constitute a good acquittance to the government. Houston v. Ormes (Dist. Col. 1920) 252 U. S. 469, 40 S. Ct. 369, 64 L. Ed. 667, affirming (1918) 47 App. D. C. 364.

§ 148. Same; payment of salaries of Senators, Members, and officers of Congress. Whenever any appropriation made for the payment of the salaries of Senators, Members, and Delegates in Congress, or the officers and employees of both or either of the Houses thereof, or for the expenses of the same, or any committees thereof, can not be lawfully disbursed by or through the officers specially charged with such disbursements, such disbursements may be made for the purposes named in said appropriations by the Treasurer of the United States, who shall take proper vouchers therefor and charge such disbursements against such appropriations; and the accounts therefor shall be audited and passed or rejected, as the law may require, in the same manner that similar accounts are or may be required by law to be audited and passed or rejected. (June 22, 1882, c. 236, 22 Stat. 108.)

Historical Note

This was an act entitled "An act to provide for the payment of the salaries and compensation of Members of the Houses of Congress and their officers and employees in certain contingencies."

§ 149. Liabilities outstanding three or more years. At the termination of each fiscal year all amounts of moneys that are represented by certificates, drafts, or checks, issued by the Treasurer, or by any disbursing officer of any department of the Government, upon the Treasurer or designated depositary of the United States, or upon any national bank designated as a depositary of the United States, and which shall be represented on the books of either of such offices as standing to the credit of any disbursing officer, and which were issued to facilitate the payment of warrants, or for any other purpose in liquidation of a debt due from the United States, and which have for three years or more remained outstanding, unsatisfied, and unpaid,

shall be deposited by the Treasurer, to be covered into the Treasury by warrant, and to be carried to the credit of the parties in whose favor such certificates, drafts, or checks were respectively issued, or to the persons who are entitled to receive pay therefor, and into an appropriation account to be denominated "outstanding liabilities." (R. S. § 306; May 29, 1920, c. 214, § 1, 41 Stat. 654.)

Historical Note

This section is from R. S. § 306, which was derived from Act May 2, 1866, c. 70, §§ 1, 4, 14 Stat. 41, 42.

The words "or any assistant treasurer" which preceded the words "or designated depositary of the United States" in the original text, were evidently omitted as inoperative in view of Act May 29, 1920, c. 214, § 1, 41 Stat. 654, repealing all laws providing for assistant treasurers at certain cities.

The General Accounting Office is required, at the end of each fiscal year, to report to the Secretary of the Treasury all checks issued by disbursing officers of the government, unpaid for three years, by section 154 of this title.

Notes of Decisions

1. Effect of issue of check.—When a claim passes into the form of checks its legal character changes from that of a demand for goods sold and delivered to a claim represented by the checks given in liquidation of the original demand. It then becomes a legal obligation arising upon the new form of indebtedness. Wardwell v. U. S. (1898) 34 Ct. Cl. 535.

2. Claims on outstanding drafts not affected by limitations or lapse of time.—After a draft is issued and covered into the treasury, the government holds the fund in trust, and limitations as to the claim therefor does not run until demand. Ray v. U. S. (D. C. Ind. 1892) 50 F. 166, 168; Wayne v. U. S. (1891) 26 Ct. Cl. 274; Russell v. U. S. (1902) 37 Ct. Cl. 113. See, also, Wardwell v. U. S. (1898) 34 Ct. Cl. 535.

While it may be that this section and sections 150 and 151 of this title, do not provide for the creation of an express trust, liability for which, according to general rules, continues until there is a direct repudiation thereof, yet they contain a continuing promise by the government to hold the money thus covered into the Treasury for the benefit of the owner until such time as he shall call for it. This is a continuing promise, and one to which full force and efficacy should be given. Judgment, Wardwell v. U. S. (1895) 32 Ct. Cl. 30, affirmed U. S. v. Wardwell (Ct. Cl. 1898) 19 S. Ct. 86, 172 U. S. 48, 43 L. Ed. 360.

The purpose of the provisions of Act May 2, 1866, c. 70, incorporated into this section and sections 150 and 151 of this title was to secure to each party who holds government paper the amount thereof, to place it in the Treasury to his credit, and to prescribe a method by which whenever he wishes he can obtain it. No time is mentioned within which he must apply for a warrant or after which the money is forfeited to the government. The ordinary rules for the maturity of negotiable paper do not control. There is no occasion for suit until after an application for a warrant is refused. When the contract created by the promise made in section 151, is broken, then a claim for the breach of such contract first accrues, and the limitation prescribed by section 262 of Title 28, Judicial Code and Judiciary, begins to run. Id.

The indebtedness of the United States on balances stated in favor of parties on the books of the Treasury Department under this section and sections 150 and 151 of this title, is not rendered stale by lapse of time in making application for payment. The only proof to be made as to them is the identity of the claimant or his right to represent the record creditor. Waddell v. U. S. (1890) 25 Ct. Cl. 323, 328.

3. Disavowal of trust.—An act repealing an appropriation must be regarded as a disavowal of the trust; and it must be held that the statute of limitations began to run at the date of the repealing Act. Russell v. U. S. (1902) 37 Ct. Cl. 113.

4. Negotiability of outstanding draft.—A treasury draft outstanding for more than three years, the appropriation to pay it covered into the treasury, has ceased to be negotiable paper. Harris v. U. S. (1892) 27 Ct. Cl. 177.

5. Recovery on draft outstanding in hands of third person.—A claimant having an amount rightly due to her, standing to her credit on the books of the treasury, is entitled to recover, though a draft more than three years outstanding for the same debt is in the hands of a third person. Harris v. U. S. (1892) 27 Ct. Cl. 177.

6. Payment of lost or stolen draft not postponed.—Where a government check or draft is lost or stolen, the statutes do not require that payment must be postponed for three years or preclude a suit. Becker v. U. S. (1891) 26 Ct. Cl. 172.

§ 150. Vouchers for drafts remaining unpaid. The certificate of the Secretary of the Treasury, stating that the amount of any draft issued by the Treasurer, to facilitate the payment of a warrant directed to him for payment, has remained outstanding and unpaid for three years or more, and has been deposited and covered into the Treasury in the manner prescribed by section 149 of this title, shall be, when attached to any such warrant, a sufficient voucher in satisfaction of any such warrant or part of any warrant, the same as if the drafts correctly indorsed and fully satisfied were attached to such warrant or part of warrant. And all such moneys mentioned in this and in section 149 shall remain as a permanent appropriation for the redemption and payment of all such outstanding and unpaid certificates, drafts, and checks. (R. S. § 307; July 31, 1894, c. 174, § 16, 28 Stat. 210.)

Historical Note

This section is from R. S. § 307 (Act May 2, 1866, c. 70, 14 Stat. 41) as amended by Act July 31, 1894, c. 174, § 16, 28 Stat. 210.

The amendment consisted in the substitution of the words "Secretary of the Treasury," in the first line of the section, instead of the words "Register of the Treasury," in the section as originally enacted.

Notes of Decisions

See, also, the notes to section 149 of this title.

1. Liabilities of sureties of officer.—Section 82 of Title 5, Executive Departments and Government Officers and Employees, authorizing the salary of an officer in arrears to be withheld, and this section with section 151 of this title, in relation to the payment of warrants after three years from issuance, form no part of the contract with the officer's sureties. They were not passed to protect sureties, but to better secure the government. U. S. v. Potter (C. C. Minn. 1879) Fed. Cas. No. 16,076.

§ 151. Payment upon presentation of outstanding drafts. The payee or the bona fide holder of any draft or check the amount of which has been deposited and covered into the Treasury pursuant to sections 149 and 150 of this title, shall, on presenting the same to the proper officer of the Treasury, be entitled to have it paid by the settlement of an account and the issuing of a warrant in his favor, according to the practice in other cases of authorized and liquidated claims against the United States. (R. S. § 308.)

Editorial comment.—It has been suggested that the words "of the Treasury" should be revised or omitted, presumably because of the changes made by the Budget and Accounting Act (chapter 1 of this title).

Historical Note

This section of the Revised Statutes was derived from Act May 2, 1866, c. 70, § 3, 14 Stat. 42.

Notes of Decisions

See also notes to sections 149 and 150 of this title.

1. Proof of theft.—The nonproduction of a treasury draft is sufficiently accounted for by proof that it was stolen and has not been heard of for more than seventeen years, and in such case the claimant need not give bond of indemnity. Wayne v. U. S. (1891) 26 Ct. Cl. 274.

§ 152. Accounts of disbursing officers unchanged for three years. The amounts, except such as are provided for in section 149 of this title, of the accounts of every kind of disbursing officer, which shall have remained unchanged, or which shall not have been increased by any new deposit thereto, nor decreased by drafts drawn thereon, for

the space of three years, shall in like manner be covered into the Treasury, to the proper appropriation to which they belong; and the amounts thereof shall, on the certificate of the Treasurer that such amount has been deposited in the Treasury, be credited by the General Accounting Office on the books of the department or establishment, to the officer in whose name it had stood on the books of the General Accounting Office for such department or establishment, if it appears that he is entitled to such credit. (R. S. § 309.)

Historical Note

This section of the Revised Statutes was derived from Act May 2, 1866, c. 70, § 5, 14 Stat. 42.

Prior to its incorporation into the Code, the concluding portion read as follows: "shall, * * * be credited by the proper accounting officer of the Department of the Treasury on the books of the Department, to the officer in whose name it had stood on the books of any agency of the Treasury, if it appears that he is entitled to such credit."

It was evidently changed to read as above set forth to conform to section 44, et seq., and section 71, of this title.

§ 153. Reports of Treasurer and depositaries. The Treasurer, each designated depositary of the United States, and the cashier of each of the national banks designated as such depositaries, shall, at the close of business on every 30th day of June, report to the Secretary of the Treasury the condition of every account standing, as in section 152 of this title specified, on the books of their respective offices, stating the name of each depositor, with his official designation, the total amount remaining on deposit to his credit, and the dates, respectively, of the last credit and the last debit made to each account. (R. S. § 310; July 1, 1916, c. 209, § 5, 39 Stat. 336.)

Historical Note

This section is from R. S. § 310, which was derived from Act May 2, 1866, c. 70, § 6, 14 Stat. 42.

The words "each assistant treasurer" which followed the words "the Treasurer" in the original text, were evidently omitted as rendered inoperative by Act May 29, 1920, c. 214, § 1, 41 Stat. 654, repealing laws providing for assistant treasurers.

A provision for a return by disbursing officers of checks outstanding and unpaid for three years was presumably omitted as superseded by section 154 of this title.

§ 154. Reports of unpaid checks by General Accounting Office. At the termination of each fiscal year the General Accounting Office shall report to the Secretary of the Treasury all checks issued by any disbursing officer of the Government as shown by his accounts rendered to the General Accounting Office, which shall then have been outstanding and unpaid for three years or more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, the number, and the amount for which it was drawn, and, when known, the residence of the payee. (July 1, 1916, c. 209, § 5, 39 Stat. 336; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—It has been suggested that the reports required by this section are not now made to the Secretary of the Treasury by the General Accounting Office.

Historical Note

This section was a part of the sundry civil appropriation act for the fiscal year 1917, cited in the credit to the text.

Prior to its incorporation into the Code, it referred to the Auditors instead of the General Accounting Office. The

powers and duties of the Auditors were vested in, and imposed upon, the General Accounting Office, by Act June 10, 1921, c. 18, § 304, 42 Stat. 24 (section 44 of this title).

The original text contained a further provision that the reports referred to therein should be in lieu of the returns by disbursing officers required by R. S. § 310.

§ 155. Restrictions upon Treasurer. No person appointed to the office of Treasurer, shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of $3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one-half the aforesaid penalty of $3,000, when recovered, shall be for the use of the person giving such information. (R. S. § 243.)

Historical Note

This section of the Revised Statutes was derived from Act Sept. 2, 1789, c. 12, § 8, 1 Stat. 67.

Prior to its incorporation into the Code, it referred to persons appointed to the office of Secretary of the Treasury, First Comptroller, First Auditor, Treasurer or Register. The First Comptroller and First Auditor were designated Comptroller of the Treasury, and Auditor for the Treasury Department by Act July 31, 1894, c. 174, §§ 3, 4, 28 Stat. 205, and the offices were abolished by Act June 10, 1921, c. 18, §§ 301, 310, 42 Stat. 23, 25.

The section, as applicable to the Register, is also set forth in section 163 of this title, and, as applicable generally, in section 243 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

See notes to section 243 of Title 5, Executive Departments and Government Officers and Employees.

CHAPTER 4.—THE REGISTER

Sec.
161. Register.
162. Same; duties.
163. Restrictions upon register.
164. Assistant register.
165. Same; duties.
166. Temporary acting assistant register.

Section 161. Register. There shall be in the Department of the Treasury a Register of the Treasury, who shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 312.)

Historical Note

This section of the Revised Statutes was derived from Act Sept. 2, 1789, c. 12, § 1, 1 Stat. 65; Act May 8, 1872, c. 140, § 13, 17 Stat. 85.

As enacted in the Revised Statutes, it contained a further provision that the Register should be entitled to a salary of $4,000 a year. The office of Register was continued, with a salary of $4,500, on the reorganization of the Department by Act March 3, 1875, c. 130, § 2, 18 Stat. 396. Subsequent appropriations for the Register were $4,000. See Act Jan. 3, 1923, c. 22, 42 Stat. 1092. These salary provisions were evidently omitted as superseded by the Classification Act of 1923 (chapter 13 of Title 5, Executive Departments and Government Officers and Employees).

§ 162. Same; duties. The duties of the Register of the Treasury shall be such as are required of him in connection with the public debt and such further duties as may be prescribed by the Secretary of the Treasury. (July 31, 1894, c. 174, § 10, 28 Stat. 208.)

Historical Note

This was part of section 10 of the Dockery Act, cited in the credit to the text.

A further provision of that section repealed R. S. § 313, specifying the duties of the register.

Notes of Decisions

1. Liability of United States for erroneous opinion given by register.—The government is not responsible for an erroneous opinion concerning the right of an administrator to transfer a United States bond given by the Register of the Treasury. German Bank of Memphis v. U. S. (1891) 26 Ct. Cl. 198, affirmed (1893) 13 S. Ct. 702, 148 U. S. 573, 37 L. Ed. 564.

§ 163. Restrictions upon register. No person appointed to the office of Register of the Treasury shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of $3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had,

one-half the aforesaid penalty of $3,000, when recovered, shall be for the use of the person giving such information. (R. S. § 243.)

Historical Note

See the Historical Notes to section 155 of this title, and section 243 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

See the notes to section 243 of Title 5, Executive Departments and Government Officers and Employees.

§ 164. Assistant register. There shall be in the office of the Register of the Treasury an assistant register, who shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 314.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 20, 1863, c. 44, § 1, 12 Stat. 656; and Act March 14, 1864, c. 30, § 7, 13 Stat. 28.

As enacted in the Revised Statutes, it contained a further provision fixing the salary of the Assistant Register at $2,000 a year. The office of Assistant Register was continued with a salary of $2,500, on the reorganization of the Department by Act March 3, 1875, c. 130, § 2, 18 Stat. 396. These salary provisions were doubtless omitted as superseded by the Classification Act of 1923 (chapter 13 of Title 5, Executive Departments and Government Officers and Employees).

The Act of March 3, 1875, c. 130, § 2, provided for a deputy register, but this office was abolished by the Act of Aug. 15, 1876, c. 287, § 1, 19 Stat. 151.

§ 165. Same; duties. The assistant register shall perform such duties as may be devolved on him by the register, and, in the absence of the register, shall act in his stead; and any official record, certificate, or other document, excepting warrants, bonds, and drafts, signed by the assistant register, shall have the same effect as if signed by the register. (R. S. § 315.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 20, 1863, c. 44, § 2, 12 Stat. 656.

§ 166. Temporary acting assistant register. During the absence of the Register of the Treasury, and while the assistant register is discharging, under the law, the duties of register during his said absence, the Secretary of the Treasury may, by appointment under his hand and seal, delegate authority to any chief of division or clerk in the office of register to act as assistant register during the said absence of the register. (Dec. 13, 1892, No. 1, 27 Stat. 752.)

Historical Note

This was a resolution, entitled "Joint resolution relating to the discharge of certain official duties in the Office of Register of the Treasury."

CHAPTER 5.—THE BUREAU OF ENGRAVING AND PRINTING

Sec.
171. Powers of and reports by director.
172. Leaves of absence to employees.
173. Same.
174. Impressions of portraits.
175. Engraved plates of portraits of deceased Senators and Representatives.
176. Disposition of receipts for miscellaneous work.
177. Bonds, notes, and checks; printing on presses and power presses directed by Secretary of Treasury; internal revenue stamps.
178. Appropriations for Bureau of Engraving and Printing.
179. Limitation on expenditure of funds.

Section 171. Powers of and reports by director. All the business of the Bureau of Engraving and Printing shall be under the immediate control of the director of said bureau, subject to the direction of the Secretary of the Treasury, and the director of the said bureau shall report to and be responsible directly to the Secretary of the Treasury. (June 4, 1897, c. 2, § 1, 30 Stat. 18.)

Historical Note

This was a proviso annexed to an appropriation for engravers, etc., in the sundry civil appropriation act for the fiscal year 1898, cited in the credit to the text. The same proviso was contained in the similar appropriation for the preceding year.

For appropriation for the Bureau of Engraving and Printing for the fiscal year 1927 see Act March 2, 1926, c. 43, Title I, 44 Stat. 145.

Cross-References

Appropriations for expenditures of the Bureau are not to be contingent expenses of the Treasury Department, and are not to be subject to the provisions of section 258 of Title 5, Executive Departments and Government Officers and Employees, and section 675 of this title, by a provision of section 178 of this title.

§ 172. Leaves of absence to employees. The employees of the Bureau of Engraving and Printing, including the pieceworkers, shall be allowed leave of absence with pay, not exceeding thirty days in any one year, under such regulations and at such time or times as the director of the bureau, with the approval of the Secretary of the Treasury, may prescribe and designate: *Provided,* That the length of the leave of absence of any employee of said bureau doing piecework, and the pay during such leave of absence, shall be determined by the average amount of work done by such person and the pay therefor during the several months of the year. (July 6, 1892, c. 154, 27 Stat. 87; June 4, 1897, c. 2, § 1, 30 Stat. 18.)

Historical Note

This was an Act of July 6, 1892, entitled "An act to allow thirty days' leave of absence to employees in the Bureau of Engraving and Printing."

That act superseded a provision of Act March 3, 1887, c. 392, § 1, 24 Stat. 594, which authorized leaves of absence of fifteen days.

Upon its incorporation into the Code, the words "Chief of the Bureau" appearing in the original text of this section were evidently changed to "director of the bureau" to conform to section 171 of this title and recent appropriation acts. See Act March 2, 1926, c. 43, 44 Stat. 145.

Notes of Decisions

1. Provisions not repealed.—Employés of the Bureau of Engraving and Printing are entitled to leave of absence under this section, notwithstanding the provisions of sections 29–32 of Title 5, Executive Departments and Government Offi-

cers and Employees, applicable to all clerks and employés in the executive departments, as those provisions did not operate as an implied repeal of the special provisions of this section. (1896) 21 Op. Atty. Gen. 338.

2. Effect of proviso.—As the pieceworker is entitled to the leave of absence with pay only in accord with this section, it cannot be said that any reduction arises from the proviso, but on the other hand the proviso designates the measure by which the length of the leave and the amount of leave pay may be determined. (1892) 20 Op. Atty. Gen. 429.

3. Authority to execute provisions.—"While the proviso may be somewhat obscure as to the method of its execution, its purpose does not admit of question, and authority to make all necessary regulations to execute the Act [this section] and carry out the intent of the proviso is explicitly given." (1892) 20 Op. Atty. Gen. 429.

4. Pieceworkers subject to rules of department, etc.—It is evident that Congress intended to establish the rule that the pieceworkers referred to, who continue in regular employment throughout the year, may have not exceeding thirty days' leave of absence annually, subject to the rules of the department and the proper supervision of the chief of the bureau acting under the approval of the secretary. (1892) 20 Op. Atty. Gen. 429.

5. Rates of pay of pieceworkers during leave of absence.—This section contemplated a maximum leave of absence to pieceworkers of thirty days, with a continuance of average compensation; and a leave of absence with pay during the same to a pieceworker whose service and consequent earnings are less than the maximum, determined by the average amount of his work and of his pay therefor. (1892) 20 Op. Atty. Gen. 429.

§ 173. Same. The compositors and pressmen employed in the awards division of the Bureau of Engraving and Printing shall be allowed leave of absence with pay not exceeding thirty days in any one year, or a pro rata portion thereof for a less time than one year, under such regulations and such time or times as the director of the bureau, with the approval of the Secretary of the Treasury, may prescribe and designate, and in conformity with section 172 of this title. (June 8, 1896, c. 373, 29 Stat. 275; June 4, 1897, c. 2, § 1, 30 Stat. 18.)

Historical Note

This was a provision of the deficiency appropriation act for the fiscal year 1896, cited in the credit to the text.

Prior to its incorporation into the Code it referred to the "Chief of the Bureau" instead of the "director of the bureau." See the Historical Note to section 172 of this title.

§ 174. Impressions of portraits. The Secretary of the Treasury, at the request of a Senator, Representative, or Delegate in Congress, the head of a department or bureau, art association, or library, may furnish impressions from any portrait or vignette which is now, or may be a part of the engraved stock of the Bureau of Engraving and Printing, at such rates and under such conditions as he may deem necessary to protect the public interests. (Dec. 22, 1879, c. 2, 21 Stat. 59.)

Historical Note

This was an act entitled "An act relating to printing impressions from portraits and vignettes."

§ 175. Engraved plates of portraits of deceased Senators and Representatives. The Secretary of the Treasury may deliver the engraved plates of portraits that have been or may be made of deceased Senators and Representatives in Congress, to their heirs or legal representatives on such terms and conditions as he may determine. (July 1, 1916, c. 209, § 1, 39 Stat. 275.)

Historical Note

This was a provision in the sundry civil appropriation act for the fiscal year 1917, cited in the credit to the text.

§ 176. Disposition of receipts for miscellaneous work. Receipts for miscellaneous work authorized by law to be performed by the Bureau of Engraving and Printing for the several departments of the Government, and the amounts properly chargeable to national banks for engraving their plates shall be deposited, and covered into the Treasury as miscellaneous receipts except as otherwise provided by law. (Aug. 4, 1886, c. 902, § 1, 24 Stat. 227.)

Historical Note

This was a proviso annexed to an appropriation for engravers, etc., in the sundry civil appropriation act for the fiscal year 1887, cited in the credit to the text.

Appropriation acts for recent years contain a provision for the particular fiscal year only, that during such fiscal year, all proceeds derived from work performed by the Bureau, by direction of the Secretary of the Treasury, not covered and embraced in the appropriation for the Bureau for the said fiscal year, instead of being covered into the Treasury as miscellaneous receipts, as provided by this act shall be credited when received to the appropriation for the bureau for the fiscal year. The provision for the fiscal year 1927 was by Act March 2, 1926, c. 43, 44 Stat. 146.

§ 177. Bonds, notes, and checks; printing on presses and power presses directed by Secretary of Treasury; internal revenue stamps. The proviso of the Act of July 1, 1898 (Thirtieth Statutes at Large, page 604), directing that all bonds, notes, and checks shall be printed on hand-roller presses shall not apply to checks, the backs and tints of all United States bonds, the backs and tints of all United States paper money, and the backs and tints of bonds and paper money issued by any of the insular possessions of the United States, any or all of which shall be printed from intaglio plates and on such plate printing presses as may be directed by the Secretary of the Treasury, said presses to be operated by plate printers, except that checks and tints may be printed by any desired process: *Provided*, That the Secretary of the Treasury is authorized to print from plates of more than four subjects each upon power presses the fronts and backs of any paper money, bonds, or other printed matter on or after January 3, 1923, authorized to be executed at the Bureau of Engraving and Printing: *Provided further*, That the Secretary of the Treasury may, in his discretion, apply motors to hand-roller presses that were on August 24, 1912, or thereafter operated in the Bureau of Engraving and Printing, but such presses, if equipped with motors, shall be regarded as hand-roller presses within the meaning of this section. (Aug. 24, 1912, c. 355, § 1, 37 Stat. 430; Jan. 3, 1923, c. 22, 42 Stat. 1099.)

Editorial comment.—The proviso of the Act of July 1, 1898, mentioned in this section, read as follows: "Hereafter all bonds, notes, and checks shall be printed from hand-roller presses."

It was presumably omitted from the Code as superseded by the provisions incorporated in this section, but the propriety of omitting it has been questioned. If superseded, it would seem that the reference thereto in this section is unnecessary, and that the first part of the section should read:

"Checks, the backs and tints of all United States bonds, the backs and tints of all United States paper money, and the backs and tints of bonds and paper money issued by any of the insular possessions of the United States, shall be printed from intaglio plates," etc.

It has also been suggested that the words "that are now, or may hereafter be" which appeared in the original text of the last proviso, should be restored in lieu of the words "that were on August 24, 1912, or thereafter."

Historical Note

The first proviso of this section is from the Act of Jan. 3, 1923, c. 22, cited in the credit to the text, and the rest of the section from Act Aug. 24, 1912, c. 355, likewise cited to the text.

The Act of 1912 contained two additional provisos, evidently omitted as superseded or obsolete, which read as follows: "Provided, That the backs of all United States paper money shall be printed from four-subject plates, and the faces of all internal-revenue stamps now printed from intaglio plates on hand-roller or power plate printing presses shall continue to be printed from intaglio plates on hand-roller or power plate printing presses, as the Secretary of the Treasury may determine, said presses to be operated by plate printers: Provided further, That should the Secretary of the Treasury decide to print on the aforesaid power plate printing presses any of the classes of work hereinbefore permitted to be printed on such presses, not more than one-fifth of the total number of hand-roller presses required to produce the estimated quantity of such work in any fiscal year shall be displaced in such fiscal year." The provision taken from the Act of 1923, was followed in that act by a provision, presumably omitted as temporary and obsolete, that the Secretary, in the exercise of the authority thereby conferred, should reduce the number of persons employed in the operation of plate printing presses by not less than 218.

Provisos accompanying appropriations in Act Oct. 6, 1917, c. 79, § 1, 40 Stat. 349, and Act July 11, 1919, c. 6, § 1, 41 Stat. 44, authorized the Secretary of the Treasury, during the war with Germany, to have bonds, notes, checks, or other printed papers, printed in such manner and by whatever process and on any style of presses that he considered suitable, subject to certain qualifications therein contained.

§ 178. Appropriations for Bureau of Engraving and Printing. The appropriations made for all expenditures of the Bureau of Engraving and Printing shall be used in the manner in which appropriations for said bureau were used June 4, 1897, and no part of said appropriations shall be held to be contingent expenses of the Treasury Department, nor be subject to the provisions of sections 258 of Title 5 and 675 of this title. (June 4, 1897, c. 2, § 1, 30 Stat. 18.)

Historical Note

This was a provision of the sundry civil appropriation act for the fiscal year 1898, cited in the credit to the text.

A similar provision, but applying only to the appropriation for the year, was made by the sundry civil appropriation act of June 11, 1896, c. 420, § 1, 29 Stat. 421.

§ 179. Limitation on expenditure of funds. No fund appropriated by any Act other than that appropriated for the Bureau of Engraving and Printing shall be used for payment of the director, assistant director, chief of division of assignments and reviews, chief clerk, disbursing agent, cost accountants, stenographers, storekeepers, assistant storekeepers, clerks, attendants, messengers and assistant messengers, captains and lieutenants of watch, watchmen, forewomen of charwomen, charwomen, or laborers, in the Bureau of Engraving and Printing, except in cases of emergency arising after the passage of the Act making appropriations for such bureau, and then only on the written approval of the Secretary of the Treasury, and in every such case of emergency a detailed statement of the expenditures on account thereof shall be reported to Congress at the beginning of each regular session. (Mar. 3, 1921, c. 124, § 1, 41 Stat. 1271.)

Editorial comment.—It has been suggested that this provision was temporary, and applicable only to the appropriations for the particular fiscal year, and should be omitted.

Historical Note

This is from the legislative, executive, and judicial appropriation act for the year 1922, cited in the credit to the text. A similar provision is contained in prior acts.

Prior to its incorporation into the Code, this section read as follows: "No other fund appropriated by this or any other Act shall be used for services in the Bureau of Engraving and Printing, of the character specified in this paragraph, except in cases of emergency arising after the passage of this Act, and then only on the written approval of the Secretary of the Treasury, and in every such case of emergency a detailed statement of the expenditures on account thereof shall be reported to Congress at the beginning of each regular session."

CHAPTER 6.—DEBTS DUE BY, OR TO, THE UNITED STATES

Sec.
191. Priority established.
192. Liability of fiduciaries.
193. Priority of sureties.
194. Compromise.
195. Purchase on execution.
196. Discharge of poor debtor; by Secretary of the Treasury.
197. Same; by President.
198. Debts to the United States; in what currency to be paid.
199. Same; what coin receivable.
201. Debts of United States; national bank notes receivable for.
202. Same; treasury notes payable for.
203. Assignments of claims void.
204. Oath by person prosecuting claims.
205. Same; who may administer.
206. Claims of disloyalists.
207. Retention of money due States in default.
208. Payment to officers for horses lost.
209. Payment for property lost while in military service.
210. Payment for horses lost by capture.
211. Payment for condemned horses and equipage.
212. Payment to guardian for horse lost by minor in military service.
213. Payment to owner for horse furnished and lost in military service.
214. Taking testimony as to loss.
215. Settlement of claims not exceeding $1,000; certification of amounts found due to Congress; time for presentation.
216. Same; definitions.
Sec.
217. Same; effect of acceptance of amount found due.
218. Settlement of claims for loss of property in military service.
219. Same; extent of liability.
220. Same; examination; payment; replacement.
221. Same; final determination.
222. Same; time for presentation.
223. Settlement of claims for loss or damage to private property from operations, etc., of Army.
224. Settlement of claims for damages from operation of aircraft.
225. Judgments of Court of Claims; payment.
226. Same; certified by Secretary of the Treasury; interest.
227. Offsets against judgments and claims against United States.
228. Payment of judgments against United States made on settlements by General Accounting Office.
229. Private claims pending before Congress; taking of testimony.
230. Same; subpœna for taking testimony; compensation of officers and witnesses; return of depositions.
231. Liability of persons making false claims.
232. Same; suits.
233. Duty of district attorney as to such cases.
234. Rights of persons presenting such suits.
235. Limitation of suit.

Historical Note

R. S. §§ 300A and 300B, added to the Revised Statutes by Act Feb. 18, 1875, c. 80, § 1, 18 Stat. 317, relative to claims of loyal citizens in states not in rebellion, for quartermaster's stores and subsistence, actually furnished to the Army of the United States, and receipted for by the proper officer receiving the same, or taken by such officers without giving such receipt; and Act June 16, 1874, c. 285, § 2, 18 Stat. 75, requiring the Quartermaster General, Commissary General, and Third Auditor to continue to receive, examine, and consider the justice and validity of claims brought before them under Act July 4, 1864 (substantially incorporated in R. S. §§ 300A, 300B), and acts amendatory thereof, were evidently omitted from the Code as obsolete.

Act March 2, 1901, c. 800, 31 Stat. 877, provided for the appointment of a commission (referred to in subsequent appropriation acts as the Spanish Claims Commission, or Spanish Treaty Claims Commission) to receive, examine, and adjudicate claims of citizens of the United

States against Spain, which the United States agreed to adjudicate and settle by the Treaty of Dec. 10, 1898 (30 Stat. 1757). Section 16 of that Act limited the powers and jurisdiction of such commission to two years, subject to extension by the President, from time to time, not exceeding six months in each instance. It was doubtless omitted from the Code as temporary and obsolete.

Notes of Decisions

1. R. S. §§ 300A and 300B.—As to effect of incorporation into Revised Statutes, see Ludington v. U. S. (1879) 15 Ct. Cl. 453, 459.

Not material whether actual presentation of claims occurred before or after adoption of act. (1875) 15 Op. Atty. Gen. 36.

Officers simply accounting officers, and final determination of liability with Congress. Ludington v. U. S. (1879) 15 Ct. Cl. 453. But see Huffman v. U. S. (1881) 17 Ct. Cl. 55.

Court of Claims without jurisdiction, when new issue not presented to Quartermaster General. Fowler v. U. S. (1890) 25 Ct. Cl. 122.

2. Spanish Claims Commission.—Act did not confer the power on the commission to call for certified copies, but conceded an option to the Secretary of State to furnish originals or copies. (1901) 23 Op. Atty. Gen. 470.

Section 191. Priority established. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (R. S. § 3466.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1797, ch. 20, § 5, 1 Stat. 515; Act March 2, 1799, ch. 22, § 65, 1 Stat. 676.

Cross-References

Taxes due the United States are entitled to priority of payment out of bankrupt estates by section 104 of Title 11, Bankruptcy.

Notes of Decisions

1. Nature of right.
2. General rules of construction.
3. Operation and effect—In general.
4. —— Debts due prior to enactment of statute.
5. ——Local laws or rules as affecting priority.
6. —— Priority in suits in equity.
7. —— Effect as creating lien on debtor's property.
8. Matters creating priority in general.
9. Insolvency of debtor—In general.
10. —— What constitutes insolvency.
11. —— Voluntary assignment by insolvent debtor in general.
12. —— Acts which constitute an assignment.
13. —— Separate assignments as constituting one transaction.
14. —— Property of debtor included in assignment.
15. —— Burden of proving debtor's assignment includes all his property.
16. —— Necessity of appearing or presenting or proving claim.
17. Bankruptcy of debtor—In general.
18. —— Acts of bankruptcy.
19. —— Necessity of proof in bankruptcy proceedings.
20. —— Debtor's discharge in bankruptcy as affecting priority.
21. Attachment by process of law.
22. Debtors to which priority applies.
23. Debts to which priority applicable.
24. —— Taxes.
25. —— Debts due United States officers and corporations.
26. —— Debts arising out of federal control of railroads.
27. Property to which priority applies—In general.
28. —— Property and obligations of partnerships and individual partners.
29. —— Proceeds of debtor's surety bond.
30. —— Estates of deceased debtors.
31. —— Real estate or proceeds thereof vested in heirs of deceased debtor.
32. Rights of sureties.

33. Priority as against adverse rights —In general.
34. —— Exemptions and allowances.
35. —— Expenses.
36. —— Priority over debts due a state.
37. —— Conveyances, assignments, and transfers.
38. —— Mortgages.
39. —— Liens.
40. —— Claims for labor or material.
41. —— Execution, attachment, or other process.
42. Application of payments.
43. Necessity of first exhausting security.
44. Loss or waiver of priority.
45. Decree as bar.
46. Proceedings to enforce.
47. Jurisdiction of courts.

History of section.—This section "is a re-enactment and extension of § 65, Act of March 2, 1799, c. 22, 1 Stat. 676; and the same or equivalent language, so far as the question here involved is concerned, is found in earlier statutes. Acts of March 3, 1797, c. 20, § 5, 1 Stat. 515; also Act of May 2, 1792, c. 27, § 18, 1 Stat. 263; Act of August 4, 1790, c. 35, § 45, 1 Stat. 169; Act of July 31, 1789, c. 5, § 21, 1 Stat. 42." U. S. v. Oklahoma (Okl. 1923) 261 U. S. 253, 43 S. Ct. 295, 67 L. Ed. 638.

1. Nature of right.—This right of priority is not an attribute of sovereignty, but depends on the acts of Congress. U. S. v. State Bank of North Carolina (N. C. 1832) 6 Pet. 29, 30, 8 L. Ed. 308; Peoples' Nat. Bank v. Corse (1916) 182 S. W. 917, 133 Tenn. 720.

It depends exclusively on statute. Liberty Mut. Ins. Co. v. Johnson Shipyards Corporation (C. C. A. N. Y. 1925) 6 F.(2d) 752, affirming (D. C. 1924) 300 F. 952. Affirmed Stripe v. U. S. (1926) 46 S. Ct. 182, 269 U. S. 503, 70 L. Ed. 379.

So claim of United States for priority of payment of tax debt depends on priority statute, and does not rest on any sovereign prerogative. U. S. v. Middle States Oil Corporation (C. C. A. Okl. 1927) 18 F.(2d) 231.

And though United States, in taking over and operating railroads, acted in sovereign capacity, rights of Director General as to priority of claims arising out of operation rests on statutory provisions, and not on sovereign prerogative. Mellon v. Michigan Trust Co. (Mich. 1926) 46 S. Ct. 511, 271 U. S. 236, 70 L. Ed. 924, affirming (C. C. A. 1924) 2 F.(2d) 194.

2. General rules of construction.—Such statutes as this ought to receive a fair and reasonable interpretation according to the just import of their terms. U. S. v. State Bank of North Carolina (N. C. 1832) 6 Pet. 29, 35, 8 L. Ed. 308.

But this act has reference to the public good, and must be liberally construed. Beaston v. Farmers' Bank (Md. 1838) 12 Pet. 102, 134, 9 L. Ed. 1017. To the same effect, see Bramwell v. U. S. Fidelity & Guaranty Co. (Or. 1926) 46 S. Ct. 176, 269 U. S. 483, 70 L. Ed. 368; U. S. v. People's Trust Co. (D. C. N. H. 1927) 17 F.(2d) 437; In re Stiles' Estate (N. Y. Sur. 1926) 215 N. Y. S. 134, 126 Misc. Rep. 715.

3. Operation and effect.—In general.—In all cases of insolvency or bankruptcy of one indebted to the United States, the government is entitled to priority of payment out of the debtor's property. U. S. v. Fisher (Pa. 1805) 6 U. S. (2 Cranch) 358, 2 L. Ed. 304, reversing U. S. v. Fisher (C. C. 1803) Fed. Cas. No. 15103. This is true whether the debtor be principal or surety, or is solely, or only jointly with others, liable, and it is immaterial where the debt was contracted. Lewis v. U. S. (Pa. 1876) 92 U. S. 618, 23 L. Ed. 513. This priority is not a right which supersedes and overrules the assignment of the debtor, as to any property which the United States may afterwards elect to take in execution, so as to prevent its passing by virtue of such assignment to the assignees; but it is a mere right of prior payment, out of the general funds of the debtor in the hands of the assignees. Conard v. Atlantic Insurance Co. (Pa. 1828) 1 Pet. 386, 438, 7 L. Ed. 189. In a case of insolvency, death, or assignment the property of the debtor passes to the assignee, executor, or administrator; the priority of the United States operating, not to prevent the transmission of the property, but giving them a preference in payment out of the proceeds. Brent v. Bank of Washington (Dist. Col. 1836) 10 Pet. 596, 611, 9 L. Ed. 547.

Under this act these rules have been clearly established: First, no lien is created; second, the priority established can never attach while the debtor continues the owner and in possession of the property, though he may be unable to pay all his debts; third, no evidence can be received of the insolvency of the debtor until he has been divested of his property in one of the modes stated; and, fourth, whenever the debtor is thus divested of his property, the person who becomes invested with the title is thereby made a trustee for the United States, and is bound to pay the debt first out of the proceeds of the debtor's property. Beaston v. Farmers' Bank (Md. 1838) 12 Pet. 102, 132, 9 L. Ed. 1017. See, also, In re Baltimore Pearl Hominy Co. (D. C. Md. 1923) 294 F. 921, reversed on other grounds (C. C. A. 1925) 5 F.(2d) 553.

Where a debt originally due to the United States by virtue of an assessment of an internal revenue tax has been merged in the tax sale and purchase in pursuance thereof by the United States, the United States holds the legal title to the land, and has a full, complete, and adequate remedy at law in the action of eject-

ment against the original owners in possession, or against any grantee in possession who became such subsequent to the assessment of the tax. U. S. v. Wilson (Tenn. 1886) 6 S. Ct. 991, 992, 118 U. S. 86, 30 L. Ed. 110.

As to the right of the United States to priority in the payment of their debts, and the remedies for its enforcement against assignees of debtors, see U. S. v. Clark (C. C. N. Y. 1826) Fed. Cas. No. 14,-807.

The priority of the United States as a creditor, under this act is secured only when by law or the act of the debtor his property is attached, sequestered or being administered for the benefit of his creditors generally. U. S. v. Wilkinson (C. C. Mo. 1878) Fed. Cas. No. 16,695.

The provisions of this section and the provisions of the national banking law being, as applied to demands against national banks, inconsistent and repugnant, the former law must yield to the latter, and is, to the extent of the repugnancy, superseded by it; hence, the provisions of the national banking act (chapter 2 of Title 12, Banks and Banking) protecting the United States by requiring national banks to deposit satisfactory security, withdraws national banks, which have failed, from that class of insolvent persons out of whose estates demands of the United States are under this section to be paid in preference to the claims of other creditors. This view of the banking law is not affected by the subsequent enactment in 1867 of the bankrupt act (repealed) giving priority to the demands of the United States against the estates of bankrupts. That act dealt only with the estates of persons adjudged insolvent under that law, and covered only the distribution of their estates. Cook County Nat. Bank v. U. S. (Ill. 1882) 2 S. Ct. 561, 563, 107 U. S. 445, 27 L. Ed. 537, reversing (C. C. Ill. 1879) Fed. Cas. No. 14853; In re Bologh (D. C. N. Y. 1911) 185 F. 825.

If priority in favor of the United States attaches at all on the taking over of a bank by the state bank commissioner, it takes effect immediately on the taking over of the bank. U. S. v. State of Oklahoma (Okl. 1923) 43 S. Ct. 295, 261 U. S. 253, 67 L. Ed. 638.

As the United States has no common law, whatever right of priority in the payment of debts the United States possesses over other creditors exists because of some statute which confers it. It does not exist independently of statute. The decisions of the Supreme Court, extending over a period of more than 100 years, have clearly established the law that the right of the United States to priority of payment is statutory, and does not apply while the debtor continues the owner of the property, even though he is unable to pay his debts. No evidence can be received of the insolvency of a living debtor until he has been divested of his property by making a voluntary assignment thereof, or has committed an act of bankruptcy, or his effects have been attached by process of law on the ground that he is an absconding, concealed, or absent debtor. This section makes a distinction between living and deceased debtors. In the case of a deceased debtor the section expressly provides that the United States shall have priority if the estate in the hands of the executor or administrator "is insufficient to pay all the debts due to the United States." In the case of a living debtor the language is quite different. Equitable Trust Co. v. Connecticut Brass, etc., Corp. (C. C. A. Conn. 1923) 290 F. 712

In order to give the priority specified in this section relating to debts due the United States, there must be an insolvent debtor who makes a voluntary assignment of his property, or a case in which the estate of an absconding, concealed, or absent debtor is attached by process of law, or a case in which an act of bankruptcy is committed. Davis v. Miller-Link Lumber Co. (C. C. A. Tex. 1924) 296 F. 649.

"By virtue of this statute the United States had a preference in the payment of its debts under any of the conditions mentioned in the statute, but not in a distribution which for any reason did not come within the statute." Davis v. Pringle (C. C. A. S. C. 1924) 1 F.(2d) 860, affirmed (1925) 45 S. Ct. 549, 268 U. S. 315, 69 L. Ed. 974.

The right of a surety to a preference under this section and section 193 of this title, is a creature of statutory law and exists only in cases where the facts fall strictly within provisions of statute. United States Fidelity & Guaranty Co. v. Porter (D. C. Idaho, 1924) 3 F.(2d) 57.

This section applies to insolvent state banks, but not national banks. U. S. v. Adams (D. C. Wash. 1925) 9 F.(2d) 624.

4. —— Debts due prior to enactment of statute.—This section does not apply to a debt due before the passing of the act, although the balance was not adjusted at the treasury until after the act was passed. U. S. v. Bryan (Del. 1815) 9 Cranch, 374, 386, 3 L. Ed. 764.

A debt due to the United States by a deceased revenue officer is entitled to priority of payment from his administrators, whether the debt arose before or after Act March 3, 1797 (incorporated in part in this section). Commonwealth v. Lewis (Pa. 1814) 6 Bin. 266.

5. —— Local laws or rules as affecting priority.—Local laws of state cannot create priority in favor of other creditors and so defeat priority of United States. Field v. U. S. (La. 1835) 9 Pet. 182, 200, 9 L. Ed. 94.

The priority of the United States is not affected by the local rule that lands consisting of different parcels, subject to a general incumbrance, are, in equity, to be

charged in the inverse order of alienation of the separate fund. U. S. v. Duncan (C. C. Ill. 1850) Fed. Cas. No. 15,003.

The right to priority of payment provided for by this section attaches when the conditions specified by this section come into existence; and it cannot be impaired or superseded by a state law. U. S. v. Oklahoma (Okl. 1923) 261 U. S. 253, 43 S. Ct. 295, 67 L. Ed. 638.

6. —— Priority in suits in equity.—In a suit in equity the claims of the United States have only the same force as those of a private individual under like circumstances. Hemmer v. U. S. (S. D. 1912) 204 F. 898, 123 C. C. A. 194, reversing (D. C. 1912) 195 F. 790. Affirmed (1916) 36 S. Ct. 659, 241 U. S. 379, 60 L. Ed. 1055. See In re Strassburger (C. C. Ala. 1877) Fed. Cas. No. 13,526.

Under this section, government's right to priority over other creditors does not extend to equity proceedings wherein receiver is appointed, though circumstances are sufficient to make such appointment an act of bankruptcy. Davis v. Michigan Trust Co. (C. C. A. Mich. 1924) 2 F.(2d) 194, certiorari granted (1925) 45 S. Ct. 507, 267 U. S. 591, 69 L. Ed. 802 and affirmed (1926) 46 S. Ct. 511, 271 U. S. 236, 70 L. Ed. 924.

This section does not apply, so as to give United States priority for money due on income taxes and excess profits taxes in equity receivership suit. Liberty Mut. Ins. Co. v. Johnson Shipyards Corporation (C. C. A. N. Y. 1925) 6 F.(2d) 752, affirming (D. C. 1924) 300 F. 952. Affirmed Stripe v. U. S. (1926) 46 S. Ct. 182, 269 U. S. 503, 70 L. Ed. 379.

7. —— Effect as creating lien on debtor's property.—This section does not give the United States a lien upon its debtor's property, but only a right to priority of payment out of the same in certain cases. U. S. v. Eggleston (C. C. Or. 1877) Fed. Cas. No. 15,027; Same v. Griswold (C. C. Or. 1881) 8 F. 496; People's Nat. Bank v. Corse (1916) 182 S. W. 917, 133 Tenn. 720. It does not create any lien upon the property of a deceased debtor, but merely points out a mode of distribution. (1857) 9 Op. Atty. Gen. 28.

Where, on default of a government contractor, a United States officer took the contractor's machinery and materials to complete the work, and after its completion retained the same, claiming it as against the amount alleged to be due by the contractor for breach of the contract, the United States had no property interest therein, and it was subject to seizure under process of the state court. U. S. v. Moses (S. D. 1911) 185 F. 90, 107 C. C. A. 310.

Under this section no lien is created, and the priority does not attach until the debtor has been divested of his property in one of the modes stated therein, in which case the person who is invested with the title becomes trustee for the United States and is bound to pay its claim first out of the property. In re Baltimore Pearl Hominy Co. (D. C. Md. 1923) 294 F. 921, reversed on other grounds (C. C. A. 1925) 5 F.(2d) 553.

"On this subject it is to be remarked that no lien is created by this law. No bona fide transfer of property in the ordinary course of business is overreached. It is only a priority in payment, which, under different modifications, is a regulation in common use; and this priority is limited to a particular state of things when the debtor is living; though it takes effect generally if he be dead." Chief Justice Marshall, in U. S. v. Fisher (Pa. 1804) 2 Cranch, 358, 2 L. Ed. 304.

This section does not create a lien, and the priority thereby given to debts due from insolvents to the United States does not attach to property while the debtor continues the owner and in possession. In re C. J. Rowe & Bros. (D. C. Pa. 1927) 18 F.(2d) 658.

8. Matters creating priority in general.—A bank, the value of whose assets was less than the amount of its indebtedness, and that voluntarily, by resolution of its board of directors, surrendered all its assets to the state superintendent of banks for the purpose of liquidation, has been held to have committed an act of bankruptcy and to be "insolvent," within the meaning of this section, giving preference to debts due the United States. Bramwell v. U. S. Fidelity, etc., Co. (C. C. A. Or. 1924) 299 F. 705, affirming (D. C. 1923) 295 F. 331. Affirmed (1926) 46 S. Ct. 176, 269 U. S. 483, 70 L. Ed. 368.

The appointment of a receiver in equity for the property of a debtor is not such a divestiture of his property as to give debts due to the United States priority, under this section. Kennebec Box Co., Inc., v. O. S. Richards Corp. (D. C. N. Y. 1924) 299 F. 871, wherein the court said: "This section gives the United States priority only (1) where the person in debt to the United States is insolvent; (2) where the estate of a deceased debtor is insufficient to pay all the debts due from the deceased; (3) where a debtor not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or where there is an attachment against the estate and effects of an absconding, concealed, or absent debtor. The appointment of receivers in equity to take possession of the property of the defendant debtor is not such a divestiture of the debtor's property as gives the United States priority. Beaston v. Farmers' Bank of Delaware (Md. 1838) 12 Pet. 102, 9 L. Ed. 1017. The Equitable Trust Co. Case ([C. C. A.] 290 F. 712) supra, held that the United States cannot obtain an order, in an equity receivership

action, determining that it is entitled to priority of payment before any other debtors should be paid, under section 3466 of the Revised Statutes of the United States [this section]."

United States is entitled to priority of claims against property of "insolvent" banks taken over by state bank commissioner. U. S. v. Parker (D. C. Wis. 1925) 9 F.(2d) 473.

Where the superintendent of banks of South Dakota takes possession of a bank under the laws of the state because of insolvency, for the purpose of liquidating its affairs, he becomes trustee for the United States under this section, and is bound to first pay debts due it. U. S. v. First State Bank of Philip, S. D. (D. C. S. D. 1926) 14 F.(2d) 543.

Where state banks, having on deposit United States funds, suspended payment and were found to be insolvent by state commissioner of finance, United States was then, under this section, entitled to have property dealt with as a trust fund, and its rights or priorities recognized under the statute. U. S. v. Porter (D. C. Idaho, 1927) 19 F.(2d) 541.

Under this section and section 192 of this title, claim of the United States for postal funds deposited in trust company in hands of bank commissioner for liquidation under Pub. Laws N. H. 1926, c. 268, was entitled to preference, notwithstanding bank was closed, for express reason that public good required it rather than on ground of insolvency; it being in fact insolvent and assumption of control by commissioner equivalent to placing of receiver or trustee in charge, under section 21 of Title 11, Bankruptcy, as it existed prior to amendment of May 27, 1926 (44 Stat. 662). U. S. v. People's Trust Co. (D. C. N. H. 1927) 17 F.(2d) 437.

Since insolvency within meaning of this section was not necessary to justify commissioner of banks taking possession of trust company under G. L. c. 167, and no inference of insolvency can be inferred therefrom, claim of United States against bank in liquidation by commissioner was held not entitled to priority under this section. U. S. v. Commissioner of Banks (1925) 149 N. E. 883, 254 Mass. 173.

Taking over of bank by commissioner held not insolvency or act of bankruptcy, so as to give United States deposits priority. Strain v. U. S. Fidelity & Guaranty Co. (C. C. A. Okl. 1923) 292 F. 694, affirmed U. S. Fidelity & Guaranty Co. v. Strain (1924) 44 S. Ct. 334, 264 U. S. 570, 68 L. Ed. 854.

9. Insolvency of debtor—In general.—Where a receiver was appointed for a corporation on a creditor's bill, alleging solvency, but temporary embarrassment, and the corporation was subsequently found to be insolvent, and was in process of liquidation, debts due the United States were entitled to priority under this section. Davis v. Pullen (C. C. A. Mass. 1922) 277 F. 650.

Where postal and money order funds have been deposited by a deputy postmaster, without security, in a bank which subsequently becomes insolvent, a bill by the United States, claiming a priority over other creditors, will be dismissed. Cook County Nat. Bank v. U. S. (Ill. 1882) 2 S. Ct. 561, 107 U. S. 445, 27 L. Ed. 537.

To entitle the United States to a preference over other creditors, it must be shown that the debtor was insolvent, and had voluntarily assigned all his property for the benefit of his creditors, or that an attachment had been taken out against his property as an absent and absconding debtor, and prosecuted to effect. McLean v. Rankin (N. Y. 1808) 3 Johns. 369.

The United States is not entitled to a preference in the payment of bonds given for duties, over the general creditors of the debtor, unless the debtor is actually insolvent and his insolvency is manifested by some notorious act. Marshall v. Barclay (N. Y. 1828) 1 Paige, 159.

The United States have a preference in the payment of customhouse bonds only in cases of notorious insolvency, such as assignment of the debtor's property, absconding, etc. U. S. v. King (C. C. Pa. 1801) Fed. Cas. No. 15,536.

The priority of the United States as a creditor under the revenue laws begins with the insolvency of the debtor, and attaches to all the property vested in him at that time. Hopkins v. Duffy (Pa. 1878) 9 Lanc. Bar 125.

Under this section, a receiver who distributes to creditors a sum of money received prior to the due date of income tax would be personally responsible, where a valid claim is made by the government, on due date. Pennsylvania Cement Co. v. Bradley Contracting Co. (D. C. N. Y. 1920) 274 F. 1003.

Sovereign is not bound by any of provisions of an insolvency law, unless especially mentioned therein. Villere v. U. S. (C. C. A. La. 1927) 18 F.(2d) 409.

In determining question of insolvency, capital stock and surplus in no sense constitute indebtedness of bank, its obligation to a stockholder not being a debt, but latter's right being to receive ratable share of assets after all debts are paid. U. S. Fidelity & Guaranty Co. v. Porter (D. C. Idaho, 1924) 3 F.(2d) 57.

Where corporation in hands of receiver was not insolvent within meaning of section 1 (subd. 15) of Title 11, Bankruptcy, at time of appointment of receiver, or any time subsequent thereto, the United States was not entitled, under this section, to priority in its claim for taxes.

U. S. v. Middle States Oil Corporation (C. C. A. Okl. 1927) 18 F.(2d) 231.

10. —— **What constitutes insolvency.**—The insolvency must be a legal and known insolvency manifested by some notorious act of the debtor pursuant to law. Prince v. Bartlett (Mass. 1814) 8 Cranch, 431, 433, 3 L. Ed. 614.

The word "insolvency" referred to in these acts means a legal insolvency which, whenever it occurs, the right of preference arises to the United States as well as in other specified cases to which the statute has extended the cases of insolvency. Thelusson v. Smith (Pa. 1817) 2 Wheat. 396, 425, 4 L. Ed. 271.

Mere inability of the debtor to pay all his debts is not an insolvency, but it must be manifested in one of the three ways pointed out in the explanatory clause of the section. Conard v. Atlantic Insurance Co. (Pa. 1828) 1 Pet. 386, 438, 7 L. Ed. 189.

The insolvency of a debtor, to create a preference in favor of the United States as a creditor, must be a legal insolvency, and such is a discharge under the insolvent laws. Hopkins v. Duffy (Pa. 1878) 9 Lanc. Bar 125.

A person, to be "insolvent," within this section, must have made a voluntary assignment or have had his effects attached after absconding, concealing, or absenting himself, or must have committed an act of bankruptcy. Nolte v. Hudson Nav. Co., (C. C. A. N. Y. 1925) 8 F.(2d) 859.

Insolvency of bank held not shown by proof that balance disclosed by daily statement was incorrect or that certain bills receivable were without value, where the statement showed excess of resources over indebtedness. U. S. Fidelity & Guaranty Co. v. Porter (D. C. Idaho, 1924) 3 F. (2d) 57.

The word "insolvent," as used in this section and the Bankruptcy Law (Title 11, Bankruptcy), applies only where a debtor's property is insufficient to pay all his debts. U. S. v. Oklahoma (Okl. 1923) 261 U. S. 253, 43 S. Ct. 295, 67 L. Ed. 638, wherein it was held that "insolvent," in the sense of § 303 of ch. 6, Rev. Laws Okla. 1910, which authorizes the bank commissioner, upon becoming satisfied of a bank's insolvency, to take possession and wind up its affairs, is a broader term, applicable where a bank is unable to pay depositors in the ordinary course of business, though its assets may exceed its debts, and that such a taking over of a bank by the act of the commissioner upon a finding by him of its insolvency, does not establish the right of the United States to priority of payment under this section because it does not imply insolvency within the meaning of this section and does not otherwise satisfy its conditions, either as a voluntary assignment, as an attachment of assets of an absconding, concealed or absent debtor, or as an act of bankruptcy, as defined by section 3 of Title 11 or any law of the state.

11. —— **Voluntary assignment by insolvent debtor in general.**—Priority attaches in virtue of an assignment by the insolvent debtor for the benefit of creditors and notice to the syndics, and it is their duty to make known the debts due to the United States under tableau of distribution as having priority. Field v. U. S. (La. 1835) 9 Pet. 182, 200, 9 L. Ed. 94.

An assignment by partners of all their effects for the payment of their debts, for which the partnership estate is inadequate, is an act of insolvency which will give the United States preference in the payment of their debts against the firm or its members. U. S. v. Shelton (C. C. Va. 1821) Fed. Cas. No. 16,272.

The United States have no priority in payment of their debts, unless the assignment by the debtor be a general assignment, or in the case of legal insolvency, where, by operation of law, the debtor's property is taken out of his hands to be distributed by others. U. S. v. Clark (C. C. N. Y. 1826) Fed. Cas. No. 14,807.

A judgment in favor of the United States arising out of a fraudulent entry of goods is, in case of the debtor's insolvency, entitled to the same preference given to bonds for the payment of duties, but only in case of a general assignment of the debtor's property. U. S. v. Wood (C. C. N. Y. 1841) Fed. Cas. No. 16,755.

This right to priority of payment arises only in certain cases, one of which is where a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof. U. S. v. Griswold (C. C. Or. 1881) 8 F. 496.

The United States are not entitled to a priority of payment, where a debtor is insolvent, but has made no assignment, either voluntarily or by process of law. Smith v. Tinker (Conn. 1806) 2 Day, 236.

An assignment of property by a debtor, for the payment of debts, must be a general assignment, or made with intent to evade the claims of the United States, or it is not such an insolvency as will give the United States priority. Marshall v. Barclay (N. Y. 1828) 1 Paige, 159.

Rights of government as priority creditor in case of assignments in insolvency by principal and surety defined. Hunter v. U. S. (R. I. 1831) 5 Pet. 173, 182, 8 L. Ed. 86.

12. —— **Acts which constitute an assignment.**—A debtor assigns his property within the meaning of this act when he confesses judgments for amounts equal in the aggregate to the value of such property and the priority of the United States thereupon attaches. U. S. v. Griswold (C. C. A. Or. 1881) 8 F. 496.

An assignment, to entitle the United States to their priority must be an as-

signment of all the debtor's property, but it need not be for the benefit of all his creditors. U. S. v. Mott (C. C. N. Y. 1822) Fed. Cas. No. 15,826.

A deed by a debtor of the United States conveying all his property to trustees for payment of his debts, not including the debts of the United States, is an act of insolvency, so that the priority of the United States immediately attaches. U. S. v. Marshal of District of North Carolina (C. C. N. C. 1833) Fed. Cas. No. 15,727.

A conveyance, by a known insolvent, of all his property, to one or more creditors in discharge of their own claims, not exceeding the sum due them, is not a "voluntary assignment," within this act, so as to be affected by the priority of the United States, unless made with intent to evade such priority. U. S. v. McLellan (C. C. Me. 1838) Fed. Cas. No. 15698.

The assignment of partnership property and the individual property of one partner does not establish the insolvency of the firm, so as to entitle the United States, a creditor of the firm, to maintain a bill to enforce its priority. U. S. v. Couch (C. C. N. Y. 1841) Fed. Cas. No. 14,874.

A judgment confessed by a debtor for an amount equal to the value of his assets, with intent to defraud the United States, is not such an assignment as will give priority to United States. Bush v. U. S. (C. C. Or. 1882) 14 F. 321.

A consignment of goods by a debtor abroad, though insolvent, with directions to have them sold and the proceeds paid to his creditors in New York, is not such an assignment as will entitle the United States to a preference. McLean v. Rankin (N. Y. 1808) 3 Johns. 369.

An assignment by a debtor, who is insolvent, of his property in trust for the benefit of a single creditor, which contains no provision for the benefit of creditors generally is not within this act. Bouchaud v. Dias (1848) 1 N. Y. (1 Comst.) 201, reversing (N. Y. 1843) 10 Paige, 445.

Subsidiary corporation's consent to appointment of ancillary receiver to carry on business was held not "assignment for benefit of creditors," authorizing priority to claim of United States. U. S. v. Middle States Oil Corporation (C. C. A. Okl. 1927) 18 F.(2d) 231.

Where a receiver was appointed for a corporation in a creditors' bill, alleging solvency but temporary embarrassment, and the corporation joined in the application for the appointment of the receiver and was subsequently found to be insolvent, debts due the United States were entitled to priority, as the transaction was in effect a general assignment for the benefit of creditors. Davis v. Miller-Link Lumber Co. (C. C. A. Tex. 1924) 296 F. 649.

An insolvent state bank, by putting state superintendent of banks in charge, has been held to have made "voluntary assignment" within the statute. U. S. v. First State Bank of Philip, S. D. (D. C. S. D. 1926) 14 F.(2d) 543.

In suit by surety to have declared a preference its claim against insolvent state bank within this section and section 193 of this title, evidence held insufficient to show that Idaho state finance commissioner took charge of affairs of bank under an assignment by resolution of board of directors, where such resolution did not purport to be an assignment but simply a determination to discontinue business. U. S. Fidelity & Guaranty Co. v. Porter (D. C. Idaho, 1924) 3 F.(2d) 57.

Insolvent corporation by consenting to appointment of receiver in suit wherein mere inability to meet maturing obligations, was alleged, was held to have made voluntary assignment for benefit of creditors within this section. U. S. v. Butterworth-Judson Corporation (N. Y. 1926) 46 S. Ct. 179, 269 U. S. 504, 70 L. Ed. 380, reversing (C. C. A. 1924) 297 F. 971; Price v. U. S. (N. Y. 1926) 46 S. Ct. 180, 269 U. S. 492, 70 L. Ed. 373, affirming Mears v. Gidding & Co. (C. C. A. 1925) 6 F.(2d) 758.

A bank, whose assets were less than its liabilities, and which voluntarily, by resolution of its board of directors, surrendered its assets to state superintendent of banks for liquidation under Or. Laws, §§ 6221–6223, was held to have made a voluntary assignment for benefit of creditors within this section and sections 192 and 193 of this title. Bramwell v. U. S. Fidelity & Guaranty Co. (1926) 46 S. Ct. 176, 269 U. S. 483, 70 L. Ed. 368, affirming (C. C. A. Or. 1924) 299 F. 705, which affirmed (D. C. 1924) 295 F. 331.

13. —— **Separate assignments as constituting one transaction.**—To entitle the United States to a priority, there must be an actual, though not a declared, insolvency, and the assignment must be general; but a party cannot, by assigning all his property by different acts, defeat the priority, under the pretext that the assignments are partial. U. S. v. United States Bank (La. 1844) 8 Rob. 262.

To entitle the United States to a preference in the payment of bonds given for duties over the general creditors of the debtor, where an insolvent debtor makes an assignment voluntarily for the benefit of his creditors, it must appear that the assignment was of all of the property of the debtor; but where a debtor is actually insolvent, and, intending to assign his whole property, first makes an assignment of a portion for the benefit of some of his creditors, and afterwards makes another assignment of the residue of his property for the benefit of the remainder of his creditors, the two assignments will be regarded as one transaction, and the United States will be entitled to a preference. Marshall v. Barclay (N. Y. 1828) 1 Paige, 159.

If an insolvent make an assignment of part of his estate for the benefit of creditors, and at another time another part for the same purpose, such assignments are to be construed as one transaction, in reference to the claim of the United States for priority of payment, though, if one fund has paid all the United States' debt, it is entitled to contribution from the other. Downing v. Kintzing (Pa. 1816) 2 Serg. & R. 326.

14. —— Property of debtor included in assignment.—This section gives the United States no lien on the real estate of their debtor until suit brought, so that an assignment for the benefit of creditors to show insolvency under this section must be an assignment of all the debtor's property, and not a part. U. S. v. Hooe (Dist. Col. 1805) 3 Cranch, 73, 90, 2 L. Ed. 370.

The United States are not entitled to priority over the other creditors upon the ground of the debtor having made an assignment for the benefit of creditors, unless it is proved that the debtor has made an assignment of all his property. U. S. v. Howland (Mass. 1819) 4 Wheat. 108, 116, 4 L. Ed. 526.

Insolvency or inability to pay debts by a debtor to the United States does not give the United States a preference, unless such insolvency is accompanied by a voluntary assignment of all the property of the debtor for the benefit of his creditors. Thelluson v. Smith (C. C. Pa. 1815) Fed. Cas. No. 13,878 affirmed (1817) 2 Wheat. 396, 4 L. Ed. 271.

The omission of a small part of the debtor's property from the assignment, by mistake or fraud, will not defeat the priority of the United States. U. S. v. Langton (C. C. Mass. 1829) Fed. Cas. No. 15,-560.

The United States are not entitled to priority out of funds in the hands of assignees, unless there be a general assignment by the debtor of all his property. U. S. v. Munroe (C. C. Mass. 1830) Fed. Cas. No. 15,835.

The priority of the United States is not defeated, it seems by the fact that the debtor, after assigning his property to trustees for the payment of his debts, recovers property in the right of his wife by legal proceedings, whatever the amount thereof. U. S. v. Marshal of District of North Carolina (C. C. N. C. 1833) Fed. Cas. No. 15,727.

Whether property omitted from the debtor's deed is so inconsiderable as to show an intent to evade the statute is a question in the sound discretion of the court. Id.

15. —— Burden of proving debtor's assignment includes all his property.—Where the United States claimed priority on the ground of the debtor having made an assignment of all his property unless the deed of assignment shows it to include the whole, the burden is thrown on the United States to show that it does include all the property. U. S. v. Howland (Mass. 1819) 4 Wheat. 108, 116, 4 L. Ed. 526.

If an assignment does not on its face purport to be of all the debtor's property, the United States, to obtain priority, must show that it does in fact transfer all. U. S. v. Langton (C. C. Mass. 1829) Fed. Cas. No. 15,560.

16. —— Necessity of appearing or presenting or proving claim.—United States need not appear in insolvency proceedings in state courts to preserve priority. Field v. U. S. (La. 1835) 9 Pet. 182, 200, 9 L. Ed. 94.

Under this section and section 192 of this title, it is not necessary for the federal government to obtain an extension of time for filing with assignee of insolvent corporation, of government's claim for freight accruing to it while operating railroads, nor was it necessary to file claim within three months; it being sufficient that notice was given to assignee of such claim. In re Farmers' Co-op. Co. (Iowa, 1925) 206 N. W. 251, 200 Iowa, 1160.

If federal government has valid claim against insolvent corporation for unpaid taxes, its claim must be proved like any other claim, and, if allowed, such claim will have priority over claims of other creditors. Reinecke v. General Combustion Co. (1925) 237 Ill. App. 404.

Federal government is not barred from asserting claim against assets in hands of receiver appointed by state court at any time during pendency of receivership before distribution, though after time fixed by such court for filing of claims, since United States are not bound by any statute of limitations, nor barred by laches of officers, however gross, in suit brought by them as sovereign government to enforce public right or to assert public interest. Id.

17. Bankruptcy of debtor—In general.—See, also, notes to section 104 of Title 11, Bankruptcy.

It has been held that paragraphs (a) and (b) of section 104 of Title 11, Bankruptcy, as to payment of taxes and debts having priority, are in pari materia with this section, giving debts due the United States from insolvent debtors priority, and supersede this section in part, and the right of taxes to priority is governed by those paragraphs, and not by this section. In re Jacobson (C. C. A. Ill. 1920) 263 F. 883.

As to estates in bankruptcy, Title 11, Bankruptcy supersedes this section, as to priority of United States for debts due to it. In re Caswell Const. Co. (D. C. N. Y. 1926) 13 F.(2d) 667.

And the right of the United States to claim priority, under this section is modified and restricted by section 93 (par. j) of Title 11, Bankruptcy. U. S. v. Re-

mingham Trust & Savings Co. (C. C. A. Ala. 1919) 258 F. 562, certiorari denied (1919) 40 S. Ct. 56, 251 U. S. 550, 64 L. Ed. 410.

But it has also been held that the priority of the United States under this section applies to claims against a bankrupt except as to claims for other things than taxes which are postponed by section 104 (par. a) of Title 11, Bankruptcy, to state taxes and the cost and expense of preserving and administering the estate and to salaries and wages. In re Atlantic, etc., Steamship Co. (D. C. Md. 1923) 289 F. 145, affirmed and petition to revise dismissed (C. C. A. 1925) 3 F.(2d) 438.

And the claim of the United States against an agent importing goods for his principal for the duties has priority on the agent becoming a bankrupt. Walkof v. Fox (1915) 153 N. Y. S. 27, 90 Misc. Rep. 338, affirmed (1914) 155 N. Y. S. 1146, 171 App. Div. 908, appeal dismissed (1915) 217 N. Y. 663, 112 N. E. 1078.

Under former bankruptcy laws the United States were not bound by the general equity rule for marshaling assets, nor by the rule prescribed by the bankrupt act (repealed) in conformity thereto, any further than as that rule was founded, in the particular case, on the lien of several parties inter sese. In re Strassburger (C. C. Ala. 1877) Fed. Cas. No. 13,526.

The United States, not being bound by the bankrupt acts, and not being compelled to proceed under them to recover a claim against a bankrupt, was entitled to allowance from the bankrupt estate of its full claim, regardless of the rights of the creditors. In re Huddell (D. C. Pa. 1891) 47 F. 206.

Property in hands of trustee in bankruptcy must be first applied in payment of bankrupt's debt to the United States. U. S. v. Dewey (C. C. N. Y. 1889) 39 F. 251.

An agent of the United States in England, cannot, by conforming to the bankrupt laws there, lessen the priority of the United States established here. Harrison v. Sterry (D. C. S. C. 1807) Fed. Cas. No. 6,144. See (1809) 5 Cranch, 289, 3 L. Ed. 104.

Section 193 of this title, giving the surety of a government contractor, who pays the United States the amount due on the bond, a priority for the moneys like that secured to the United States, gives such surety the priority enjoyed by the United States over other claimants of an insolvent under this section, but does not entitle the surety to share equally with the United States in the assets of the bankrupt contractor, where the amount of the bond was insufficient to pay the government's loss under the contract, and the assets of the bankrupt were less than the claim of the United States, which construction is in harmony with the rule of subrogation that a surety, liable only for part of the debt, does not become subrogated to remedies available to the creditor, unless he pays the whole debt or it is otherwise satisfied. U. S. v. National Surety Co. (1920) 41 S. Ct. 29, 254 U. S. 73, 65 L. Ed. 143, reversing (C. C. A. Mo. 1919) 262 F. 62.

18. —— Acts of bankruptcy.—The taking over of a bank by the bank commissioner, under Rev. Laws Okl. 1910, § 302, is not an "act of bankruptcy," within section 21 (par. A) of Title 11, Bankruptcy, and hence gives claims of the United States no priority under this section, since the bank commissioner does not take possession because of the existence of insolvency within the meaning of the federal laws. U. S. v. State of Oklahoma (Okl. 1923) 43 S. Ct. 295, 261 U. S. 253, 67 L. Ed. 638.

What constitutes an "act of bankruptcy" by a bank is determined by Bankruptcy Act (Title 11, Bankruptcy), though inapplicable to banks. Bramwell v. U. S. Fidelity & Guaranty Co. (Or. 1926) 46 S. Ct. 176, 269 U. S. 483, 70 L. Ed. 368, affirming (C. C. A. Or. 1924) 299 F. 705, which affirmed (D. C. 1923) 295 F. 331.

Receivership in state proceeding has been held not act of bankruptcy as entitles United States to priority. Anderson v. Myers (C. C. A. Fla. 1924) 296 F. 101, certiorari granted (1924) 44 S. Ct. 335, 264 U. S. 578, 68 L. Ed. 858, and dismissed (1925) 45 S. Ct. 351, 267 U. S. 609, 69 L. Ed. 812.

Navigation company, consenting to receivership, was held not to have committed an "act of bankruptcy." Nolte v. Hudson Nav. Co. (C. C. A. N. Y. 1925) 8 F.(2d) 859.

Action of state superintendent of banking in taking possession of bank's assets for liquidation was held an "act of bankruptcy." U. S. v. Adams (D. C. Wash. 1925) 9 F.(2d) 624.

A bank, whose assets were less than its liabilities, and which voluntarily, by resolution of its board of directors, surrendered its assets to state superintendent of banks for liquidation, under Or. Laws, §§ 6221-6223, was held to have committed an act of bankruptcy defined by section 21 of Title 11, Bankruptcy, as respected priority under this section and sections 192 and 193 of this title. Bramwell v. U. S. Fidelity & Guaranty Co. (Or. 1926) 46 S. Ct. 176, 269 U. S. 483, 70 L. Ed. 368, affirming (C. C. A. Or. 1924) 299 F. 705, which affirmed (D. C. 1923) 295 F. 331.

19. —— Necessity of proof in bankruptcy proceedings.—The United States need not prove their debt in bankruptcy before filing a bill to enforce their pri-

ority of payment. U. S. v. Lewis (C. C. Pa. 1875) Fed. Cas. No. 15,595, affirmed in (1876) 92 U. S. 618, 23 L. Ed. 513.

The United States recovering a judgment upon a claim accruing after the commencement of the proceedings in bankruptcy is entitled to priority, and no proof of claim need be made. In re Bousfield & Poole Mfg. Co. (D. C. Ohio, 1878) Fed. Cas. No. 1,704.

Section 104 (cl. "b," subd. 5) of Title 11, Bankruptcy, providing that claims of the United States against the bankrupt shall be entitled to priority of payment, and be paid in full, is in pari materia with this section, and therefore entitles the United States to priority, whether it prove its debt in bankruptcy proceedings or not. In re Stoever (D. C. Pa. 1904) 127 F. 394.

20. —— Debtor's discharge in bankruptcy as affecting priority.—A debt due to the United States, though it be by one who owes it as a surety only, is not barred by the debtor's discharge with certificate, under the bankrupt act of 1867, (repealed), although the United States may prove its debt and has priority over other creditors, and though the act provides, in general terms, that the certificate shall release the bankrupt from all debts, claims, liability, and demands which were or might have been proved against his estate in bankruptcy, and that it may be pleaded as a full and complete bar of any such debts, claims, liabilities, or demands. U. S. v. Herron (La. 1874) 20 Wall. 251, 22 L. Ed. 275.

21. Attachment by process of law.—The attachment mentioned is not such an attachment as is authorized by the laws of Missouri, which is for the exclusive benefit of the creditor who makes it. U. S. v. Wilkinson (C. C. Mo. 1878) Fed. Cas. No. 16,695.

This law only applies where there had been an overt and notorious act of insolvency recognized by the state, and does not give the United States priority by virtue of an execution levy on a debtor's property, subject to prior attachments sued out by creditors. Bartlet v. Prince (1812) 9 Mass. 431, affirmed (1814) 8 Cranch, 431, 3 L. Ed. 614.

If an attachment is taken out and afterwards withdrawn by consent of creditors, without any proceedings under it, it is inoperative, and gives no right of preference to the United States. McLean v. Rankin (N. Y. 1808) 3 Johns. 369.

A surety on a nonresident government contractor's bond who completed the work after attachment of the contractor's property was held not to have priority over the attachment by subrogation; the government having no priority, as the attachment was not a sequestration of the contractor's property for distribution. People's Nat. Bank v. Corse (1916) 182 S. W. 917, 133 Tenn. 720.

22. Debtors to which priority applies.—A corporation is a person, within this section. People v. Metropolitan Surety Co. (1916) 161 N. Y. S. 616, 175 App. Div. 43.

All debtors to the United States, whatever their character, may be fairly included within this section, and it is manifest that congress intended to give priority of payment to the United States over all other creditors in the cases stated. Beaston v. Farmers' Bank (Md. 1838) 12 Pet. 102, 134, 9 L. Ed. 1017.

Corporations are to be considered persons within this section, and the priority of the United States exists as to debts due by them to the United States. Id.

The United States has no priority in the assets of an insolvent national bank. (1871) 13 Op. Atty. Gen. 528.

23. Debts to which priority applicable.—The priority of the United States, in cases of the bankruptcy or insolvency of its debtors, under the provisions of this section and section 192 of this title, extends to all classes of debts. U. S. v. Barnes (C. C. N. Y. 1887) 31 F. 705, 709.

This priority extends as well to debts by bonds for duties which are payable after the insolvency or decease of the obligor as to those actually payable or due at the period thereof. In the strictest sense, the bonds for duties is debitum in præsenti, although, looking to the condition, it may be properly said to be solvendum in futuro. It is in this sense that the Legislature is to be understood in the use of the words "debt due to the United States." U. S. v. State Bank of North Carolina (N. C. 1832) 6 Pet. 29, 30, 8 L. Ed. 308.

The language of this section is general and without qualification, the form of indebtedness is immaterial, and it may be by simple contract, specialty, judgment, or decree, and the debt may be legal or equitable and may have been incurred in this country or abroad. The debtors may be joint or several and either principals or sureties. Those affected are persons indebted to the United States. Lewis v. U. S. (Pa. 1876) 92 U. S. 618, 620, 23 L. Ed. 513.

Claim of United States for postal funds deposited with trust company in course of liquidation has been held entitled to preference. U. S. v. People's Trust Co. (D. C. N. H. 1927) 17 F. (2d) 437.

Congress has a constitutional right to claim a preference out of the estate of a public debtor for debts due to the United States; and by this act they have constitutionally claimed it as against living debtors for all debts contracted thereafter and as against deceased debtors, whether contracted before or after that law. Commonwealth v. Lewis (Pa. 1814) 6 Bin. 266.

Under this section, the claim of the

United States on a recognizance entered into by a company for the appearance of a defendant in criminal proceedings is entitled to priority over all other claims, where the surety company became insolvent after entering into the recognizance, but before the defendant had failed to appear, regardless of whether the claim on the recognizance had matured at the time of the entry of the insolvency order, within the meaning of the New York Law. In re Casualty Co. of America (Sup. 1921) 187 N. Y. S. 849, affirmed (1921) 134 N. E. 571, 232 N. Y. 559.

Priority given by this section against decedent's estate exists only in favor of "debts due the United States." In re Stiles' Estate (Sur. 1926) 215 N. Y. S. 134, 126 Misc. Rep. 715.

Claims due the United States other than taxes are not entitled to priority under section 104 of Title 11, Bankruptcy, and this section, though section 104 prefers debts due a "person" entitled to priority under law of United States and section 1 of Title 11 defines person as including corporations. Davis v. Pringle (S. C. 1925) 45 S. Ct. 549, 268 U. S. 315, 69 L. Ed. 974, affirming (C. C. A. 1924) 1 F.(2d) 860, 864, and reversing (C. C. A. 1925) 6 F.(2d) 1020.

Debt due Oregon State Industrial Accident fund is not entitled to priority in bankruptcy proceeding notwithstanding this section. In re Pick (D. C. Or. 1925) 9 F.(2d) 207.

Under this section and section 192 of this title, the claim of the United States against an insolvent, based on the insolvent trespassing on government land and cutting and removing the timber thereon, is prior to other claims against the insolvent. U. S. v. Flint Lumber Co. (1908) 87 Ark. 80, 112 S. W. 217.

A deposit by the United States, through its proper agents, of individual Indian money in a state bank is entitled, upon failure of said bank, both to priority against the assets of the bank and to the protection of the state bank guaranty fund; and this is so notwithstanding a bond in accordance with federal law be first given by the bank to secure the deposit. State v. Kilgore State Bank (1924) 112 Neb. 856, 201 N. W. 901. The court said, after quoting the section: "Even this language might leave us in doubt, since the deposit in this case was of individual money belonging to the Indians, and not public money of the United States. But the money was in fact deposited by the United States as a guardian of its wards, through its Indian agent or representative, and it would seem that the law is broad enough in its purpose to cover a case of this kind."

The United States were entitled to preference, though the debt was contracted by a foreigner in a foreign country. Harrison v. Sterry (S. C. 1809) 9 U. S. (5 Cranch) 289, 3 L. Ed. 104.

24. —— **Taxes.**—"Debts," as used in this section, includes taxes. Price v. U. S. (N. Y. 1926) 46 S. Ct. 180, 269 U. S. 492, 70 L. Ed. 373. Contra, Liberty Mut. Ins. Co. v. Johnson Shipyards Corp. (D. C. N. Y. 1924) 300 F. 952; In re Wyley Co. (D. C. Ga. 1923) 292 F. 900.

In Liberty Mut. Ins. Co. v. Johnson Shipyards Corp., supra, it was held, however, that the United States government is entitled to priority of payment of income and other taxes due the government from an insolvent taxpayer; such right being an attribute of sovereignty, and not dependent on statute.

Additional excess profits tax assessed against partnership after assets were taken over by bankrupt corporation held entitled to priority under this section. In re W. J. Marshall Co. (D. C. Ga. 1924) 3 F. (2d) 192.

United States may limit its priority relative to taxes as was done by this section and secton 115 of Title 26, Internal Revenue. In re Caswell Const. Co. (D. C. N. Y. 1926) 13 F.(2d) 667.

25. —— **Debts due United States officers and corporations.**—A claim of priority in bankruptcy for a debt due under a contract with the United States Shipping Board Emergency Fleet Corporation, a corporation organized pursuant to congressional legislation under the laws of the District of Columbia, cannot successfully be asserted by such corporation, on the theory that the debt is one due it as an instrumentality of the United States, since such corporation, notwithstanding the ownership by the government of all the capital stock, is an entity, separate from the United States. United States Shipping Board, etc., Corp. v. Wood (Wash. 1922) 42 S. Ct. 386, 258 U. S. 549, 66 L. Ed. 762, affirming (C. C. A. 1921) 274 F. 893. To the same effect, see U. S. v. Wood (C. C. A. N. Y. 1923) 290 F. 109, affirmed (1923) 44 S. Ct. 134, 263 U. S. 680, 68 L. Ed. 503.

Bank deposit of trust funds by Indian agent creates "debt" due United States, within this section. Bramwell v. U. S. Fidelity & Guaranty Co. (Or. 1926) 46 S. Ct. 176, 269 U. S. 483, 70 L. Ed. 368, affirming (C. C. A. Or. 1924) 299 F. 705, which affirmed (1923) 295 F. 331.

A claim against an insolvent bank, based on cashier's checks purchased by a postmistress with funds belonging to the government, held one in favor of the United States with right to priority of payment under this section, which right was not affected by the fact that the claim was filed by, and allowed to, the postmistress and afterward assigned to the United States. U. S. v. Brock (D. C. La. 1925) 5 F.(2d) 265.

That postal and forestry moneys were deposited in names of officials would not make indebtedness any less indebtedness to United States. U. S. v. Porter (D. C. Idaho, 1927) 19 F.(2d) 541.

26. —— Debts arising out of federal control of railroads.—A claim of the Director General of Railroads for transportation charges against insolvent corporation was not entitled to priority, though receiver was appointed under circumstances amounting to voluntary assignment of property. Mellon v. Michigan Trust Co. (Mich. 1926) 46 S. Ct. 511, 271 U. S. 236, 70 L. Ed. 924, affirming (C. C. A. 1924) 2 F. (2d) 194, in which the court said that it was the intent of Act March 25, 1918, § 10 (temporary) to preserve substantive rights of all parties as they would have existed but for federal control.

Unpaid freight charges for shipments by railroad during federal control had been held to be property of the United States, and a claim therefor entitled to priority in a number of cases in the circuit courts of appeals. In re E. J. Hibner Oil Co. (C. C. A. Ill. 1920) 264 F. 667; Davis v. Pullen (C. C. A. Mass. 1922) 277 F. 650; In re Tidewater Coal Exchange (C. C. A. N. Y. 1922) 280 F. 648, certiorari denied Davis v. Coyle (1922) 43 S. Ct. 12, 260 U. S. 721, 67 L. Ed. 481. And in re Farmers' Co-op. Co. (1925) 206 N. W. 251, 200 Iowa, 1160, it was held that under this section and section 192 of this title, a claim for freight accruing to federal government while operating railroads was an indebtedness due the United States and was both preferred claim on estate of insolvent corporation and a personal liability of assignee for benefit of creditors, if after notice he failed to pay claim out of assets of insolvent. These cases seem to be overruled by Mellon v. Michigan Trust Co. (Mich. 1926) 46 S. Ct. 511, 271 U. S. 236, 70 L. Ed. 924, supra.

At the time of its bankruptcy a corporation had certain lumber in course of transportation by the Railroad Administration, which unloaded the lumber on its own ground and several months later sold it. Held that, while demurrage until unloading, and the cost of unloading were proper claims against the estate, a charge for storage as demurrage and at the demurrage rate after bankruptcy was not allowable as a prior or preferential claim or debt due the United States, under this section; also that the Director General was chargeable with the fair value of the lumber at the time of bankruptcy. In re Stork Contractors' Export Corporation (D. C. Fla. 1922) 285 F. 438.

27. Property to which priority applies—In general.—The government's right of priority extends to all the debtor's property until the debt is paid. Hunter v. U. S. (R. I. 1831) 5 Pet. 173, 182, 8 L. Ed. 86.

The priority of the United States, in cases of the bankruptcy or insolvency of their debtors, under the provisions of this section and section 192 of this title extends to all the debtor's estate which comes to the hands of his assignee. U. S. v. Barnes (C. C. N. Y. 1887) 31 F. 705, 709.

The priority given debts due the United States by this section, applies only to funds available to pay creditors of the insolvent. In re Holmes Mfg. Co. (D. C. Conn. 1927) 19 F.(2d) 239.

28. —— Property and obligations of partnerships and individual partners.—The interest of each partner in the partnership property is his share in the surplus after the partnership debts are paid, and that surplus only is liable for the separate debts of such partner; and in a case in which a partner is individually liable to the United States, the creditors of the partnership must first be paid out of the assets of the partnership. U. S. v. Hack (Md. 1834) 8 Pet. 271, 8 L. Ed. 941; U. S. v. Evans (D. C. Pa. 1836) Crabbe, 60, 25 Fed. Cas. No. 15,062; U. S. v. North Carolina State Bank (N. C. 1832) 6 Pet. 29, 8 L. Ed. 308.

The United States are not entitled to a preference over firm creditors for the payment of the individual debt of a partner out of the assets of the partnership. U. S. v. Duncan (C. C. Ill. 1850) Fed. Cas. No. 15,003; U. S. v. Evans (D. C. Pa. 1836) Fed. Cas. No. 15,062.

The United States is entitled to priority of payment out of the effects of its bankrupt or insolvent debtor, whether he be principal or surety, or be solely, or only jointly with others, liable, and it is immaterial where the debt was contracted. The United States was the creditor of a firm, A., B. & Co., doing business in London, and consisting of several persons, some of whom resided there. The others resided in this country, and, with another partner, constituted the firm of A. & Co. The members of the latter firm were duly declared bankrupt, and a trustee was appointed under the forty-third section of the bankrupt act of March 2, 1867 (repealed). Held, that the relations of the bankrupt members of the firm of A., B. & Co. to the United States are the same as if they were severally liable to the United States, and that the United States is entitled to the payment of its debt out of their separate property, in preference and priority to all other debts due by them or either of them, or by the firm of A. & Co. Lewis v. U. S. (Pa. 1876) 92 U. S. 618, 620, 23 L. Ed. 513.

The United States is under no obligation to pursue the partnership property of its debtor before asserting its right of priority against individual property of insolvent partners. Id.

The United States are entitled to priority in the separate estate of the partners, although the demand is against the firm; and, if some of the partners reside in a foreign country, they are entitled to prior-

ity out of the separate estate of the resident partners. U. S. v. Lewis (C. C. Pa. 1875) Fed. Cas. No. 15,595, affirmed in (1876) 92 U. S. 618, 23 L. Ed. 513.

Where a bankrupt firm, through fraudulent undervaluations of goods entered at the custom house, had incurred a forfeiture of their value to the United States, the claim of the latter against the firm for the tort was joint and several; and upon proof of the debt, containing a statement of the facts, the United States was entitled, under this section and R. S. § 5101 (repealed) to priority of payment out of any of the proceeds of either the joint or several estates, without reference to what might be the particular claim of priority in its proof of debt. In re Vetterlein (D. C. N. Y. 1884) 20 F. 109.

29. —— **Proceeds of debtor's surety bond.**—An absolute judgment against the administrator of a surety on the official bond of a federal official, rendered by a federal court sitting in Louisiana, is not objectionable on the theory that it should have been against the administrator, payable, only in due course of administration, since, if by the law of that state the judgment is so payable, it will be thus interpreted and enforced, subject to the priority given to the federal government by this section, in the distribution of the proceeds of the estate. Smythe v. U. S. (1903) 23 S. Ct. 279, 280, 286, 188 U. S. 156, 47 L. Ed. 425.

This section and sections 192 and 193 of this title, do not give the United States such right of priority in a fund paid into court by the surety on the bond of a contractor for government work in discharge of the obligation of the bond, which under the statute and its terms secures the claims of other creditors of the insolvent contractor as well as that of the United States, and in the absence of statutory provision such right of priority does not exist. The fact that the United States first commenced an action on the bond does not give it a right to priority, and, the fund having been paid into court, the right of the United States therein under the statute may properly be determined by the court as against other creditors brought in without objection, although the action is one at law. U. S. v. Heaton (Pa. 1904) 128 F. 414, 416, 63 C. C. A. 156, modifying (C. C. 1903) 124 F. 699.

In an action brought upon a bond given under section 270 of Title 40, Public Buildings, Property, and Works, against the principal and surety therein named, demurrer was filed to the declaration because it was not averred therein that the claim of the United States thereunder, if any, had been paid. It was held that such averment was unnecessary, because the United States was not a preferred creditor under such a bond. U. S. v. Perth Amboy Shipbuilding, etc., Co. (C. C. N. J. 1905) 137 F. 685.

30. —— **Estates of deceased debtors.**—In case of the insolvency of surviving judgment debtors in a suit on a bond for customs duties, the United States may in equity recover the debt out of the assets of a deceased judgment debtor, whose estate was also insolvent, in virtue of their general priority. U. S. v. Cushman (C. C. N. H. 1836) Fed. Cas. No. 14,908.

State statutes in relation to the proof of claims against decedents' estates are not binding on the United States in the collection of their debts. U. S. v. Backus (C. C. Mich. 1855) Fed. Cas. No. 14,491.

A debt due from the administrator, and returned on the inventory as solvent, is presumed to have been collected, and is therefore assets in his hands applicable to the payment of a debt due from the deceased to the United States. U. S. v. Eggleston (C. C. Or. 1877) Fed. Cas. No. 15,027.

In view of this and the following sections, and admitting a deputy United States marshal's right to compensation for services performed after the death of the marshal, the fees and costs arising from which he had paid the administrator, he occupied no better position than any other creditor, and his claim, with others, must be postponed to the claim of the government arising out of the settlement of the marshal's accounts, and on which it had recovered a judgment against his administrator. In re Gregory's Estate (Pa. 1876) 2 Wkly. Notes Cas. 430, 33 Leg. Int. 140.

31. —— **Real estate or proceeds thereof vested in heirs of deceased debtor.**—This act does not give a priority out of the real estate, or the proceeds of the real estate, belonging to or vested in the heirs of the debtor. U. S. v. Crookshank (N. Y. 1831) 1 Edw. Ch. 233.

32. **Rights of sureties.**—Rights of sureties, paying claims, see, also, notes to section 193 of this title.

"Section 3468 [section 193 of this title] applying an established rule of the law of subrogation (Lidderdale v. Robinson [Va. 1827] 12 Wheat. 594, 596, 6 L. Ed. 740, 741), declares that when a surety pays to the United States the money due upon * * * [a] bond, such surety * * * shall have the like priority for the recovery * * * of the moneys * * * as is secured to the United States. Section 3466 [this section] embodying the common-law rule by which the sovereign has priority over other creditors of an insolvent (U. S. v. State Bank [N. C. 1832] 6 Pet. 29, 35, 8 L. Ed. 308, 310), declares that the debts due to the United States shall first be satisfied. There is no conflict between the two sections, which are substantially a re-enactment and extension of the provisions of § 65 of the Act of March 2, 1799, c. 22, 1 Stat. 627, 676." U. S. v. National Surety Co. (Mo. 1920) 254 U. S. 73, 41 S. Ct. 29, 65 L. Ed. 143.

33. Priority as against adverse rights —In general.—A judgment gives to the judgment creditor a lien on the debtor's lands, and a preference over all subsequent judgment creditors, but the act of Congress defeats this preference in favor of the United States in cases specified in this section. Thelusson v. Smith (Pa. 1817) 2 Wheat. 396, 425, 4 L. Ed. 271.

Where debtor has conveyed his property or it has been seized under execution before right of preference has accrued to United States, such property is not subject to priority. Id.

In commenting on the above case (Thelusson v. Smith), the court, in Conrad v. Atlantic Ins. Co. (Pa. 1828) 1 Pet. 386, 7 L. Ed. 189, said: "The fact that a judgment creditor has a lien does not place him in a better situation, as a creditor, over the general funds of the debtor in the hands of the assignees. If he possess such a lien he must enforce it in the manner prescribed by law; and if he does, that may so far affect the interest of the assignees actually subjected to such lien. But it gives him no rights to the fund, until he has perfected his lien according to the course of the law. Until that period he has merely a power over the property, and not an actual interest in it. This ground is alluded to in that part of the opinion of the court where, speaking of the priority of the United States, it is said: 'The law makes no exception in favor of prior judgment creditors, etc. Exceptions there must necessarily be as to the funds out of which the United States are to be satisfied; but there can be none in relation to the debts due from a debtor of the United States to individuals. The United States are to be first satisfied; but then it must be out of the debtor's estate.' The real ground of the decision was, that the judgment creditor had never perfected his title by any execution and levy on the Sedgely estate; that he had acquired no title to the proceeds as his property, and that if the proceeds were to be deemed general funds of the debtor, the priority of the United States to payment had attached against all other creditors; and that a mere potential lien on land did not carry a legal title to the proceeds of a sale made under an adverse execution." See, also, Ex parte Dudley (C. C. Pa. 1842) 1 Pa. L. J. Rep. 96, 1 Pa. L. J. 302, 7 Fed. Cas. No. 4,114.

The priority of the United States does not supersede a mortgage on land, nor a judgment made perfect by the issue of an execution and a levy on real estate. U. S. v. Duncan (C. C. Ill. 1850) Fed. Cas. No. 15,003; (1831) 5 Op. Atty.-Gen. 763.

Where a creditor obtained judgment against a person, which created a lien on the lands of the debtor in the county in which judgment was rendered, and the United States obtained judgments against the same person, which were a lien on lands throughout the state, the court ordered the lands sold and the proceeds to be held by the solicitor or agent of the United States, subject to the order of the court. U. S. v. Duncan (C. C. Ill. 1847) 4 McLean, 207, 25 Fed. Cas. No. 15,005.

The priority of the United States does not yield to the claims of any creditors, however high may be the dignity of their debts. U. S. v. Duncan (C. C. Ill. 1850) Fed. Cas. No. 15,003.

This act does not affect any lien existing when the event took place which gave the United States priority, nor does this preference attach if the debtor has conveyed, mortgaged, or transferred his property in the ordinary course of business. Brent v. Bank of Washington (Dist. Col. 1836) 10 Pet. 596, 611, 9 L. Ed. 547.

A bona fide conveyance, mortgage, or execution, before the right of preference in the United States has accrued by an act of insolvency, will pass the right of property freed from liability for debts due to the United States. U. S. v. Delaware Ins. Co. (C. C. Pa. 1823) Fed. Cas. No. 14,942.

The equitable right of the assignee of stock taken as security for money loaned is not subject to preference of United States for debts of assignor. U. S. v. Cutts (C. C. N. H. 1832) Fed. Cas. No. 14,912.

The acts giving the United States preference in cases of insolvency will not be so construed as to destroy prior legal liens. U. S. v. Sheriff of Charleston (D. C. S. C. 1803) Fed. Cas. No. 16,276.

In view of this and the following sections, and admitting a deputy United States marshal's right to compensation for services performed after the death of the marshal, the fees and costs arising from which he had paid the administrator, he occupied no better position than any other creditor, and his claim with others, must be postponed to the claim of the government arising out of the settlement of the marshal's accounts, and on which it had recovered a judgment against his administrator. In re Gregory's Estate (Pa. 1876) 2 Wkly. Notes Cas. 430, 33 Leg. Int. 140.

Persons claiming exemption from the operation of this section, have burden of showing that they are not within its provisions. U. S. v. People's Trust Co. (D C. N. H. 1927) 17 F.(2d) 437.

34. —— Exemptions and allowances.—Section 641 of Title 18, Criminal Code and Criminal Procedure, which provides that a poor convict, who has been imprisoned 30 days solely because of the nonpayment of a fine or fine and costs, may be released on making oath that he has not any property exceeding $20 in value, "except such as is by law exempt from being taken on execution for debt," construed in connection with section 569 of

that title, providing for the collection of fines and penalties by execution against the property of the defendant "in like manner as judgments in civil cases are enforced," evidences an intention on the part of Congress to place the United States on an equality with civil contract creditors in the enforcement of judgments in criminal and penal cases, and to give the families of poor convicts the full benefit of the exemption and homestead laws of the states as against such judgments; and, in the absence of any statute expressly providing therefor, an execution on a judgment for a fine in favor of the United States cannot be levied on the defendant's homestead in Virginia, although under the state law such homestead is only exempt from contract debts, and not from judgments for torts or in favor of the commonwealth in criminal cases. Allen v. Clark (Va. 1903) 126 F. 738, 62 C. C. A. 58, affirming Clark v. Allen (D. C. 1902) 114 F. 374.

Where to an execution for a debt due the government there was a return of no property found in excess of the homestead and personal property exemptions allowed by the constitution and laws of the state, on motion by the United States district attorney for an alias execution to be issued to the marshal, and for an order of court directing him to make a levy and sale of the property without regarding such exemptions, it was held, that he was entitled to the order asked for. U. S. v. Howell (C. C. N. C. 1881) 9 F. 674.

State exemption laws are inapplicable to debts due from a citizen to the United States. Id.

The United States have no priority, over the allowance to the widow of a deceased debtor, under the state law. Postmaster General v. Robbins (D. C. Me. 1829) Fed. Cas. No. 11,314.

35. —— **Expenses.**—Expenses incurred by an assignee in insolvency in recovering a demand are chargeable on the fund, and the right of the United States to priority attaches to the residue. U. S. v. Hunter (C. C. R. I. 1828) Fed. Cas. No. 15,427.

The administrator is bound to discharge taxes and funeral charges before satisfying the claim of the United States as a creditor. U. S. v. Eggleston (C. C. Or. 1877) Fed. Cas. No. 15,027.

A debt due to the United States is to be preferred to the expenses of the last illness; but, where the same have been duly paid by the administrator without notice of the claim of the government, the priority of the latter is lost. Id.

The necessary expenses of administration are to be paid before a debt due to the United States. Id.

Decedent's reasonable funeral expenses have priority over his debts due United States for income taxes. In re Stiles' Estate (Sur. 1926) 215 N. Y. S. 134, 126 Misc. Rep. 715.

Expenses of receivership of insolvent estate have priority over taxes due United States, not secured by lien under section 115 of Title 26, Internal Revenue, notwithstanding this section since there is no fund for payment of insolvent's debts until receivership expenses are paid. Kennebec Box Co. v. O. S. Richards Corporation (C. C. A. N. Y. 1925) 5 F. (2d) 951, affirming (D. C. 1924) 299 F. 871.

36. —— **Priority over debts due a state.**—This act does not give priority to the United States against the lien of a particular state. U. S. v. Nicholls (Pa. 1805) 4 Yeates, 251, writ of error dismissed (1819) 4 Wheat. 311, 4 L. Ed. 578.

Under Const. art. 6, providing that "this Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land," and this section, taxes due to the United States from an insolvent corporation have priority over taxes due under the laws of the state. U. S. v. San Juan County, Wash. (D. C. Wash. 1922) 280 F. 120.

Taxes due the United States from an insolvent corporation have priority over taxes due the state, and this right of priority is not affected by the fact that under the laws of the state the taxes due the state became a lien before the federal tax accrued. Stover v. Scotch Hills Coal Co. (D. C. Pa. 1924) 4 F.(2d) 748.

Federal estate tax and transfer tax imposed by Act Pa. June 20, 1919 (P. L. 521; Pa. St. 1920, §§ 20465–20499), are both excises on transfer of property from a decedent and take effect at instant of transfer; neither having priority in time over other. Frick v. Commonwealth of Pennsylvania (Pa. 1925) 45 S. Ct. 603, 268 U. S. 473, 69 L. Ed. 1058, 42 A. L. R. 316, reversing (1923) 121 A. 35, 277 Pa. 242.

37. —— **Conveyances, assignments, and transfers.**—The fact that a creditor gave up his intention of levying in consideration of a general assignment in trust, first to pay his claim and then the debt of the United States, will not prevent the assignment being fraudulent and void as against the United States. U. S. v. Mott (C. C. N. Y. 1822) Fed. Cas. No. 15,826.

The beneficiary of a pledge of stocks in trust to indemnify him against liability on a bail bond has been held a bona fide purchaser, with rights superior to the United States, which was defrauded of the money with which they were bought. Leary v. U. S. (Va. 1915) 229 F. 660, 144 C. C. A. 70, affirmed (1917) 38 S. Ct. 1, 245 U. S. 1, 62 L. Ed. 113.

This act does not create a lien on the

debtor's estate, so as to avoid conveyances to a bona fide purchaser, made before an insolvency be declared according to law. Otis v. Warren (1819) 16 Mass. 53.

38. —— **Mortgages.**—Where one indebted to the United States mortgaged his property, and confessed judgment in favor of the mortgagee, which acts were held to be a voluntary assignment by the debtor, so that the priority given the United States then attached, the sale under such judgment will be set aside, and the matter referred to a master to determine the liens existing, and to sell the property to satisfy the same according to their priorities. U. S. v. Griswold (C. C. Or. 1881) 8 F. 496.

A debtor of the United States may assign his property, within the meaning of this statute, by means of judgments confessed in favor of various persons for amounts equal in the aggregate to the value thereof, and the priority of the United States will thereupon attach to the property and prevail against said judgments, but subject to all prior valid liens thereon. G., being liable to the United States in a sum more than equal to the value of his property, for money fraudulently obtained from the treasury, asked L. & B. to loan him $10,000 on his note and mortgage, then exhibited, which they declined, but let him have $3,500 on the same, with a credit indorsed on the note of $6,500, and recorded the mortgage for the full amount. Held, that upon the facts the mortgagees did not take the mortgage in excess of the loan for the purpose of aiding the mortgagor to hinder, delay, or defraud the United States, and therefore it was not fraudulent as to them. Id.

Whether the United States have priority over mortgages executed on land of the debtor, whilst a debtor to the United States, quære. (1820) 1 Op. Atty. Gen. 414.

Where a collector of customs executed a mortgage upon his real estate to indemnify his sureties, and then died insolvent, and in debt to the United States, the mortgage to the sureties is valid and effectual against the United States. (1857) 9 Op. Atty. Gen. 28.

39. —— **Liens.**—A prior lien on a policy for the premium of an insurance is overreached by the right of preference of the United States, even though the preference be founded on a subsequent act of insolvency. (1823) 1 Op. Atty. Gen. 616.

The priority of the United States cannot reach back over any valid lien whether it be general or specific. (1857) 9 Op. Atty. Gen. 28.

40. —— **Claims for labor or material**—The priority over claims for labor against a bankrupt estate which the United States possessed under this and the following sections does not exist since the passage of Bankruptcy Act July 1, 1898, § 64 (section 104 of Title 11, Bankruptcy). Guarantee Title & Trust Co. v. Title Guaranty & Surety Co. (Pa. 1912) 32 S. Ct. 457, 224 U. S. 152, 56 L. Ed. 706, reversing (Pa. 1909) 174 F. 385, 98 C. C. A. 603.

Materialmen obtained from government contractors a power of attorney to collect $6,000 out of the last payment, and were promised payment by the naval secretary of the lighthouse board, if they would continue deliveries, but were told by the secretary of the treasury that the account must be stated in the name of the contractors and receipted for by them, before payment to the materialmen. The contract was forfeited, and the work completed by the government for $726.10 less than the contract price; the last installment never becoming due the contractors. Held, that the materialmen could recover from the government only $726.10. Coates v. U. S. (Md. 1893) 53 F. 989, 4 C. C. A. 138.

The lien of laborers and materialmen will be preferred to a judgment lien in favor of the United States. Phillips v. The Thomas Scattergood (D. C. Pa. 1828) Fed. Cas. No. 11,106.

Under this section, paragraphs (a) and (b) of section 104 of Title 11, Bankruptcy, and section 115 of Title 26, Internal Revenue, tax claims against bankrupt's estate have precedence over all other claims including wage claims; "dividends to creditors," as used in section 104 of Title 11, not being limited to claims of general creditors, but including any dividend. In re Essenkay Products Co. (C. C. A. Ill. 1925) 5 F.(2d) 668.

41. —— **Execution, attachment, or other process.**—The priority of the United States does not entitle them to prior satisfaction by attachment and levy over prior attaching creditors. U. S. v. Canal Bank (C. C. Me. 1844) Fed. Cas. No. 14,715.

Execution creditors may sell vessels on which the government has a lien under chattel mortgages made for advances to build them, subject to such lien, where a sale under the mortgages can only be had on six months' notice. U. S. v. Collins (C. C. N. Y. 1858) Fed. Cas. No. 14,834.

The priority of the United States gives no lien on property which is under execution when it accrued. U. S. v. Mechanics' Bank (D. C. Pa. 1829) Fed. Cas. No. 15,756.

The priority given to the United States in the payment of debts due on custom house bonds, out of the estates of insolvents, supersedes a foreign attachment laid on the property of the insolvent, prior to the insolvency; and such debts must be first paid out of the funds attached in the hands of the garnishee. Willing v. Bleeker (Pa. 1816) 2 Serg. & R. 221.

A debtor's property, if personal, is de-

vested by a fi. fa., so as not to be liable to the preference of the United States as a creditor under a claim accruing thereafter; and, if real estate, it is devested by a levy and sale by the sheriff. Hopkins v. Duffy (Pa. 1878) 9 Lanc. Bar 125.

42. Application of payments.—This statute does not give to one part of a debt due to the United States a priority over any other part, nor does it affect the right of the debtor to apply a payment of money in his hands to either of two debts to the United States. U. S. v. Cochran (C. C. N. C. 1825) Fed. Cas. No. 14,821.

In cases of running accounts, where debits and credits are made at different times, the payments are to be deemed as made towards items antecedently due in the order of time in which they stand in the account. U. S. v. Wardwell (C. C. R. I. 1828) Fed. Cas. No. 16,640.

The officers of the treasury department have not the right to make application of payments against the will of the debtor or of his administrator. Id.

Where the United States have various debts due by bonds with different sureties, payments by the assignees must be applied pro rata. U. S. v. Amory (C. C. Mass. 1830) Fed. Cas. No. 14,443.

If a debtor of the government fail to make an application of payments, the government may do so. If both fail, the law will make the application, but it cannot do so to the prejudice of the rights of the debtor's sureties. U. S. v. Linn (C. C. Ill. 1841) Fed. Cas. No. 15,606, reversed on other grounds (1843) 1 How. 104, 11 L. Ed. 64.

43. Necessity of first exhausting security.—The United States may enforce their right of priority without first exhausting securities which they may hold. U. S. v. Lewis (C. C. Pa. 1875) Fed. Cas. No. 15,595, affirmed in (1876) 92 U. S. 618, 23 L. Ed. 513.

44. Loss or waiver of priority.—Voting for an assignee in bankruptcy and proving the debt before the commissioners did not deprive the United States of their right to priority of payment. Harrison v. Sterry (S. C. 1809) 9 U. S. (5 Cranch) 289, 3 L. Ed. 104.

An action by the government held not barred by any statute of limitations. U. S. v. Hoar (C. C. Mass. 1821) Fed. Cas. No. 15,373.

The failure of the United States to present its claim against the estate of a deceased United States marshal constitutes no defense to an action against the sureties on his official bond. U. S. v. Adams (C. C. Nev. 1892) 54 F. 114.

Where one of two partners had given bonds with sureties to the United States for duties on merchandise imported by the firm upon which there was subsequently found to be due the sum of $30,000, and deeds of trust to a third person were afterwards executed, conveying, among other property and claims, a certain debt due the firm from the government of Naples on account of the seizure of a schooner and cargo in which they had an interest, which, under the convention of the King of the two Sicilies, had been awarded to them, and now claimed and demanded by the trustees under the deeds of trust, they alleging that the debt of the United States for duties had been extinguished by the taking of the bond of one partner with sureties, held that, notwithstanding the decision of Judge Washington in the case of the United States v. Astley & Brooks, the debt remains against the firm, and must be first deducted from the amount awarded to them before payment can be made to them or their assignees. (1835) 2 Op. Atty. Gen. 719.

Where a receiver of public moneys at Kalamazoo received in payment for public lands the notes of a specie-paying bank that afterwards suspended specie payments, and then took from the bank a draft on another bank which was returned dishonored, and a receiver of assets having been appointed under the laws of Michigan, with whom the receiver of public moneys filed a claim for this debt, held that, notwithstanding the acts of the latter, the legal priority of the United States to payment still exists. (1841) 3 Op. Atty. Gen. 625.

45. Decree as bar.—The United States, not made parties to a bill in a state court for the payment of partnership debts out of partnership assets in the hands of the administrator of a partner who had died insolvent indebted to the United States, are not bound by the decree rendered therein. U. S. v. Duncan (C. C. Ill. 1850) Fed. Cas. No. 15,003.

In action by surety on deposit of Indian funds under this section and section 193 of this title, to have its claim declared a preference against funds of insolvent state bank in hands of state commissioner of finance, final decree of dismissal of former action was held to estop plaintiff from suing on same cause of action, though allegations that defendant took possession of funds by virtue of assignment were first made in second action. U. S. Fidelity & Guaranty Co. v. Porter (D. C. Idaho, 1924) 3 F.(2d) 57.

46. Proceedings to enforce.—Where the United States had secured a joint judgment against the debtor and sureties on a joint and several bond, it could not thereafter maintain a bill in equity to reach the assets of the estate of a deceased surety. U. S. v. Price (Pa. 1850) 9 How. 83, 13 L. Ed. 56.

If both principal and surety be insolvent and assign to the same person, the funds of the principal to the extent of the surety's claim are deemed assets of the surety; so that, if he also be indebt-

ed to the United States, they may sue in equity against the assignee to insure their priority. U. S. v. Hunter (C. C. R. I. 1828) Fed. Cas. No. 15,426, affirmed (1831) 5 Pet. 173, 187, 8 L. Ed. 86.

The Massachusetts trustee process lies in favor of the United States against assignees to whom property has been assigned to pay debts due on customhouse bonds, although the assignment passed the entire property to the assignees in trust. U. S. v. Langton (C. C. Mass. 1829) Fed. Cas. No. 15,560.

This act applies to equitable as well as legal debts; but such priority cannot be enforced in a suit at law brought in the name of a private creditor, who has assigned his claim to the United States. Howe v. Sheppard (C. C. Me. 1835) Fed. Cas. No. 6,772.

A bill to enforce a preference out of estate of insolvent debtor, who has made an assignment cannot be maintained against the debtor without joining the assignee as party defendant. U. S. v. Couch (C. C. N. Y. 1841) Fed. Cas. No. 14,874.

Denial of a petition by the United States, asserting the right to priority of its claim under the statute, has been held not to bar it from subsequently seeking to establish a trust in property in the hands of the receiver. Equitable Trust Co. of New York v. Connecticut Brass & Mfg. Corporation (D. C. Conn. 1925) 6 F. (2d) 582, reversed on other grounds (C. C. A. 1926) 10 F.(2d) 913.

Where answer in suit by the United States to recover postal and forestry funds deposited in state bank specifically denied that funds belonged to United States, within meaning of this section, general motions to strike answers will be denied, for the purpose of taking testimony to determine character of such funds. U. S. v. Porter (D. C. Idaho, 1927) 19 F.(2d) 541.

United States, in proceeding to recover public funds from insolvent state bank need not pursue steps required by state law. Id.

47. Jurisdiction of courts.—The circuit court had jurisdiction, on a bill in equity filed by the United States against the debtor of their debtor, they claiming a priority under Act 1799, c. 22, § 65 (incorporated in this section), notwithstanding the local law of the state where the suit was brought allowed a creditor to proceed against the debtor of his debtor, by a peculiar process at law. U. S. v. Howland (Mass. 1819) 4 Wheat. 108, 115, 4 L. Ed. 526.

The circuit court had original jurisdiction of an action to enforce priority of debt due the United States from a partnership against property of an individual partner in the hands of his trustee in bankruptcy. Lewis v. U. S. (Pa. 1876) 92 U. S. 618, 620, 23 L. Ed. 513.

The federal courts have jurisdiction of a bill in equity to reach property of the debtor in the hands of trustees notwithstanding that the United States had recovered judgment against the debtor's surety. U. S. v. Myers (C. C. Va. 1836) Fed. Cas. No. 15,844.

Banking Law N. Y. (Consol. Laws 1909, c. 2) § 19, declares that dividends to be paid by the superintendent of banks out of the assets of institutions in his charge for administration shall be paid to such persons and in such amounts and upon such notice as may be directed by the Supreme Court in the judicial district in which the principal office of such corporation or individual banker is located. Held that, where a New York trust company, prior to failure, had been appointed a depositary for bankruptcy funds whether deposits made by trustees in bankruptcy were entitled to preference under this section, was solely within the jurisdiction of the state Supreme Court, and could not be determined on a motion in bankruptcy for orders requiring the superintendent of banks to pay out such deposits. In re Bologh (D. C. N. Y. 1911) 185 F. 825.

Federal court held without jurisdiction of suit by the United States against receiver appointed by state court. Merryweather v. U. S. (C. C. A. Wash. 1926) 12 F.(2d) 407.

Failure to obtain consent of court to sue its receiver is jurisdictional. Id.

§ 192. Liability of fiduciaries. Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid. (R. S. § 3467.)

Historical Note

This section of the Revised Statutes was derived from Act March 2, 1799, c. 22, § 65, 1 Stat. 676.

Notes of Decisions

1. Priority in general.—See also notes under section 191 of this title.

In view of this section and section 191 of this title, and admitting a deputy Unit-

ed States marshal's right to compensation for services performed after the death of the marshal, the fees and costs arising from which he had paid the administrator, he occupied no better position than any other creditor, and his claim with others, must be postponed to the claim of the government arising out of the settlement of the marshal's accounts, and on which it had recovered a judgment against his administrator. In re Gregory's Estate (Pa. 1876) 2 Wkly. Notes Cas. 430, 33 Leg. Int. 140.

2. **Assignees and trustees.**—Assignees of debtor are personally liable for failure to give United States preference over other creditors. Conard v. Atlantic Insurance Co. (Pa. 1828) 1 Pet. 386, 438, 7 L. Ed. 189.

Syndics have been held not liable to United States unless funds had actually come into their hands. Field v. U. S. (La. 1835) 9 Pet. 182, 9 L. Ed. 94.

The assignee of an insolvent or bankrupt debtor becomes a trustee for the United States, and, when he has notice of the debt due the government, he cannot escape personal liability for the amount of it, to the extent of the value of the assets coming to his hands, if he fails to provide for it before making distribution to other creditors. U. S. v. Barnes (C. C. N. Y. 1887) 31 F. 705; U. S. v. Dewey (C. C. N. Y. 1889) 39 F. 251.

The trustee in bankruptcy of an importer's agent is personally liable for failure to pay the claim of the United States for duties on goods imported for such agent's principal. Walkof v. Fox (1915) 153 N. Y. S. 27, 90 Misc. Rep. 338, judgment affirmed Walkoff v. Fox (1915) 155 N. Y. S. 1146.

When the assignees for the benefit of creditors have notice of debts due to the United States, it is their duty to make known those debts in their settlement for distribution in the state court, and they are not protected by a judgment of the state court confirming the distribution among the other creditors. Field v. U. S. (La. 1835) 9 Pet. 182, 9 L. Ed. 94; U. S. v. Duncan (C. C. Ill. 1850) 4 McLean, 607, 25 Fed. Cas. No. 15,003.

Under this section and section 191 of this title, a claim for freight accruing to federal government while operating railroads is an indebtedness due the United States and is both preferred claim on estate of insolvent corporation and a personal liability of assignee for benefit of creditors, if after notice he failed to pay claim out of assets of insolvent. In re Farmers' Co-op. Co. (Iowa, 1925) 206 N. W. 251.

The preference of the United States in the distribution of the proceeds cannot be disregarded by the assignees for the benefit of creditors without making themselves personally liable for the amount payable on the demand of the United States. Allen v. U. S. (Ct. Cl. 1872) 17 Wall. 207, 21 L. Ed. 553.

It was held that an assignee in bankruptcy, when chargeable with notice of any existing claim on the part of the government, paid any dividend at his own peril, notwithstanding any order of the court in bankruptcy for such payment. In re Vetterlein (D. C. N. Y. 1890) 44 F. 57; U. S. v. Barnes (C. C. N. Y. 1887) 31 F. 705.

The property of the bankrupt that came to the hands of an assignee was by force of this statute held to be a trust fund in his hands for the payment of a debt of the United States, and he was bound, as a trustee for the plaintiff, to pay its debt first out of the proceeds of the property. The cause of action is not in the nature of a penalty, but is one which may be enforced as a trust in equity or at law by an action for money had and received, and the cause of action survives against the executors of the deceased assignee. Lewis v. U. S. (Pa. 1875) 92 U. S. 618, 23 L. Ed. 513; U. S. v. Dewey (C. C. N. Y. 1889) 39 F. 251.

When an assignee receives money for the trust estate he receives it to the use of the United States. U. S. v. Clark (C. C. N. Y. 1826) 1 Paine, 629, 25 Fed. Cas. No. 14,807.

3. **Executors and administrators.**—See notes under section 191 of this title. See, also, Smythe v. U. S. (1903) 23 Sup. Ct. 279, 286, 188 U. S. 156, 47 L. Ed. 425.

Where the United States has recovered judgment against several defendants, its right to revive the judgment against the executor of one of them, since deceased, is not affected by Gen. St. Kan. § 2890, providing that actions against executors and administrators shall be commenced within three years from the time of notice of appointment and giving bond, and that otherwise the claim shall be forever barred. U. S. v. Houston (D. C. Kan. 1891) 48 F. 207.

Whenever the proceeds of any real estate or any personal estate come into the hands of an administrator, he, having notice of the debt due to the government, becomes a trustee for the United States, U. S. v. Duncan (C. C. Ill. 1850) 4 McLean, 607, 25 Fed. Cas. No. 15,003.

Where one is adjudged guilty of criminal contempt, the executors or administrators of accused are liable to the payment of the fine imposed. Wasserman v. U. S. (Mo. 1908) 161 F. 722, 88 C. C. A. 582.

4. **Receivers.**—Under this section and section 191 of this title, a receiver who distributes to creditors a sum of money received prior to the due date of income tax would be personally responsible, where a valid claim is made by the government, on due date. Pennsylvania Ce-

ment Co. v. Bradley Contracting Co. (D. C. N. Y. 1920) 274 F. 1003.

5. Attaching creditors.—An attaching creditor is not liable under this section as trustee for the United States for proceeds realized on his attachment. U. S. v. Wilkinson (C. C. Mo. 1878) Fed. Cas. No. 16,-695.

6. Notice of debt.—The assignee is liable only if he has notice of the debt to the United States, but the notice need be such only as is sufficient to put a prudent man on inquiry. U. S. v. Clark (C. C. N. Y. 1826) Fed. Cas. No. 14,807.

It is not necessary that notice to a trustee of a claim by the United States should come from the United States. Id.

In U. S. v. Fisher (Pa. 1804) 2 Cranch, 358, 2 L. Ed. 304, note, Marshall, C. J., said; "I only say for myself, as the point has not been submitted to the court, that it does not appear to me to create a devastavit in the administration of effects, and would require notice in order to bind the executor, or administrator, or assignee."

As to the payment of inferior debts without notice of claim of the United States, see U. S. v. Hoar (C. C. Mass. 1821) Fed. Cas. No. 15,373.

Under this section and section 191 of this title, it is not necessary for the federal government to obtain an extension of time for filing with assignee of insolvent corporation, of government's claim for freight accruing to it while operating railroads, nor was it necessary to file claim within three months; it being sufficient that notice was given to assignee of such claim. In re Farmers' Co-op. Co. (Iowa, 1925) 206 N. W. 251.

7. Abatement on assignee's death.—A cause of action against an assignee for wrongfully paying the assets in his hands to other creditors than the United States does not abate on the assignee's death. U. S. v. Dewey (C. C. N. Y. 1889) 39 F. 251.

8. Estoppel to assert liability.—In cases of bankruptcy the government is not bound to go into the bankruptcy court, nor is its debt barred by a certificate of discharge, but to secure priority in payment from the funds which that court is administering, the right thereto must be asserted in that court and worked out through the bankruptcy court. After an execution had been issued against real estate of one of several joint judgment debtors, another of the debtors was adjudicated a bankrupt. During the administration of his estate the real estate exceeded in value the amount of the whole debt, the execution continued in force, and the officers of the government, with full knowledge of the facts, never asserted the right to priority. Acting on a belief induced by these circumstances that the government relied on the property levied on, the assignee withheld only his bankrupt's contributive portion of the judgment and distributed all the assets according to law. Held that, the officers of the government, having received its quota of the debts, and having executed a release of the debtor whose property was levied on, the trustee was not personally liable. U. S. v. Murphy (C. C. Ind. 1883) 15 F. 589.

The right of action against an assignee cannot be lost by waiver, laches, or estoppel, and hence the failure of the United States to prove its claim in bankruptcy does not relieve the assignee of liability for distributing the estate to other creditors. U. S. v. Barnes (C. C. N. Y. 1887) 31 F. 705.

9. Lien of government.—Where one telegraph company leased all lines and property of another, agreeing to make payments direct to stockholders of lessor, stockholders' right to payments was held not property of lessor company, authorizing government lien thereon for income taxes due from such company, either under section 115 of Title 26, Internal Revenue, or this section in view of section 114 of Title 26, Internal Revenue. U. S. v. Western Union Telegraph Co. (D. C. N. Y. 1926) 19 F.(2d) 157.

§ 193. Priority of sureties. Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects which come to the hands of his executor, administrator, or assignee, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, administrator, or assignee of such surety pays to the United States the money due upon such bond, such surety, his executor, administrator, or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States; and may bring and maintain a suit upon the bond, in law or equity, in his own name, for the recovery of all moneys paid thereon. (R. S. § 3468.)

Historical Note

This section of the Revised Statutes was derived from Act March 2, 1799, c. 22, § 65, 1 Stat. 676.

Notes of Decisions

See also notes to section 191 of this title.

1. Operation and effect in general.—A surety on the bond of one in official relation with the government is himself in contract relation with it, and, as he is liable to be sued by it, he has the right to sue it whenever a balance is due from it to which, on the principle of subrogation, he will ultimately be entitled. Shwarz v. U. S. (1900) 35 Ct. Cl. 303.

Where R. D. imported goods in his own vessel, consigned to E. D., who gave bonds for the duties, the invoice showing the goods to be the property of R. D., the sureties of E. D. cannot recover the amount paid by them from R. D. under this section. Childs v. Shoemaker (C. C. Pa. 1806) Fed. Cas. No. 2,681.

Where the principal on a bond for duties became insolvent and made an assignment to B., who mixed the avails of the assignment with his own funds and later became a bankrupt, a surety on the bond was held to have no right of priority against the assignees of B., though the United States might have been entitled to such priority under this section. Pollock v. Pratt (C. C. Pa. 1811) Fed. Cas. No. 11,256.

The rights of the surety are restricted to the preference of payment before the other creditors of the insolvent enjoyed by the United States. The advantage given to the surety does not include the special privileges and remedies conferred by law on the United States to aid in the enforcement of the right, such as to proceed against the person and effects of the executors or assignees, to require special bail, to demand judgment on motion at the return term, and to recover interest. U. S. v. Preston (C. C. Pa. 1824) 4 Wash. 446, 27 Fed. Cas. No. 16,087; Johns v. Brodhag (C. C. Dist. Col. 1804) 1 Cranch, 235, 13 Fed. Cas. No. 7,362. See Hunter v. U. S. (R. I. 1831) 5 Pet. 173, 8 L. Ed. 86, affirming U. S. v. Hunter (1828) 5 Mason, 62, 26 Fed. Cas. No. 15,426.

The right of a surety to a preference under this section and section 191 of this title giving preference to debts due the United States, is a creature of statutory law and exists only in cases where the facts fall strictly within provisions of statute. United States Fidelity & Guaranty Co. v. Porter (D. C. Idaho, 1924) 3 F. (2d) 57.

2. As superseding state laws.—This section supersedes the state laws governing subrogation priority in the distribution of the assets of an insolvent principal whose debt to the United States has been paid by his surety. American Surety Co. of New York v. Carbon Timber Co. (C. C. A. Wyo. 1919) 263 F. 295.

3. Persons who become entitled to priority—In general.—The same right of priority which belongs to the government attaches to the claim of an individual who, as surety, has paid money to the government. Hunter v. U. S. (R. I. 1831) 5 Pet. 173, 187, 8 L. Ed. 86, affirming U. S. v. Hunter (C. C. 1828) Fed. Cas. No. 15,426.

A surety who has discharged a duty bond to the United States is entitled to be subrogated only to the preference and priority of the United States to be first paid out of the estate of the principal. U. S. v. Preston (C. C. Pa. 1824) Fed. Cas. No. 16,087.

A surety on a custom house bond, after paying it, has the same priority as the United States against the estate of his principal in the hands of an assignee. U. S. v. Hunter (C. C. R. I. 1828) Fed. Cas. No. 15,426, affirmed Hunter v. U. S. (1831) 5 Pet. 173, 8 L. Ed. 86.

Under section 191 of this title giving priority to debts due the United States by an insolvent, the taking over of a bank by the state bank commissioner of Oklahoma was not insolvency, nor an "act of bankruptcy," within section 21 of Title 11, Bankruptcy, so as to give deposits of the United States priority over other deposits, since the bank commissioner does not necessarily take possession because of bank's insolvency, within the meaning of federal laws, and hence a surety on a bond to secure such deposit was not entitled to priority under this section. Strain v. U. S. Fidelity & Guaranty Co. (C. C. A. Okl. 1923) 292 F. 694, decree affirmed U. S. Fidelity & Guaranty Co. v. Strain (1924) 44 S. Ct. 334.

By Act Aug. 4, 1790, § 45, it was directed that the United States, in case a bond for duties became due, should be first satisfied in all cases of insolvency, or where any estate in the hands of executors or administrators should be insufficient to pay all the debts due from the deceased. Act May 2, 1792, provided (section 18) that, where the sureties in bonds for duties paid the same, they should have the same advantage, priority, and preference secured to the United States for the recovery thereof. Held, that the surety in a bond for duties of goods on importation into the United States, who paid the same to the custom house, had no preference for his debt, where the principal absconded as an insolvent, unless he had made an assignment, or process in the nature of a domestic attachment had issued against him, or he had been declared a bankrupt. Gallagher v. Davis (Pa. 1800) 2 Yeates, 548.

A surety on a nonresident government contractor's bond who completed the work after attachment of the contractor's property was held not to have priority over the attachment by subrogation; the government having no priority, as the attachment was not a sequestration of the contractor's property for distribution. People's Nat. Bank v. Corse (Tenn. 1916) 182 S. W. 917.

The surety on a bond given to secure a government deposit in a bank which has become insolvent is entitled to be subrogated to the priority of the government against the assets of the bank. State v. Kilgore State Bank (1924) 112 Neb. 856, 201 N. W. 901.

Thus, a surety, who on the insolvency of the bank paid the amount of a deposit by the United States of money held in trust for Indians on a reservation, was entitled to priority over the general creditors of the bank. U. S. Fidelity, etc., Co. v. Bramwell (D. C. Or. 1923) 295 F. 331, affirmed (C. C. A. 1924) 299 F. 705, which was affirmed (1926) 46 S. Ct. 176, 269 U. S. 483, 70 L. Ed. 368.

Where the liability of the estate of a deceased surety on the bond of a collector of internal revenue was established in a suit in the federal courts, whereupon the decedent's cosureties paid the entire claim without rendition of judgment against the estate, it was held that they were thereby subrogated to the rights of the United States against the estate, and their assignee was entitled to recover contribution therefrom. Pond v. Dougherty (1907) 6 Cal. App. 686, 92 P. 1035.

4. —— United States revenue officers.—The complainant, as collector of internal revenue, held not entitled, by way of subrogation, to the rights of the United States as a preferred creditor. Wilkinson v. Babbitt (C. C. Mo. 1877) Fed. Cas. No. 17,668.

A United States revenue officer, paying to the government the amount of a dishonored check received by him from a government debtor, is entitled to be subrogated to the rights of the United States against such debtor. In re McBride (D. C. Mich. 1878) Fed. Cas. No. 8,662.

5. —— Sureties on bail bonds in criminal cases.—This section has no application to bail bonds in criminal cases, and where a prisoner released on bail forfeits his recognizance, his sureties may not recover against him or his estate the amount they are compelled to pay by reason of the default. U. S. v. Ryder (N. J. 1884) 4 Sup. Ct. 196, 110 U. S. 729, 28 L. Ed. 308.

6. When right of priority attaches.—See U. S. v. Heaton (Pa. 1904) 128 F. 414, 63 C. C. A. 156.

7. Priority in bankruptcy.—The right of preference of the surety was held to remain unaffected by a former Bankrupt Law. Mott v. Maris (C. C. Pa. 1808) 2 Wash. 196, 17 Fed. Cas. No. 9,880.

Right of priority over labor claims against a bankrupt's estate, see Guarantee Title & Trust Co. v. Title Guaranty & Surety Co. (Pa. 1912) 32 Sup. Ct. 457, 224 U. S. 152, 56 L. Ed. 706, reversing Title Guaranty and Surety Co. v. Guarantee Title & Trust Co. (1909) 174 F. 385, 98 C. C. A. 603. See note under section 191 of this title.

8. Surety's priority as against United States.—This section gives a surety who pays the United States the amount due on a bond the priority enjoyed by the United States over other claimants of an insolvent under section 191 of this title, but does not entitle the surety to share equally with the United States in the assets of the bankrupt contractor, where the amount of the bond was insufficient, to pay the government's loss under the contract, and the assets of the bankrupt were less than the claim of the United States, which construction is in harmony with the rule of subrogation that a surety, liable only for part of the debt, does not become subrogated to remedies available to the creditor, unless he pays the whole debt or it is otherwise satisfied. U. S. v. National Surety Co. (Mo. 1920) 41 S. Ct. 29, 254 U. S. 73, 65 L. Ed. 143, reversing judgment (C. C. A. 1919) 262 F. 62.

9. Actions and proceedings to enforce priority.—A surety in a civil bond who is subrogated to the rights of the United States must bring the action in his own name, and not in the name of the United States. U. S. v. Ryder (N. J. 1884) 4 Sup. Ct. 196, 200, 110 U. S. 729, 28 L. Ed. 308.

A surety cannot maintain assumpsit in the name of the United States against the assignees of the principal U. S. v. Preston (C. C. Pa. 1824) Fed. Cas. No. 16,087. See, also, Johns v. Brodhag (C. C. Dist. Col. 1804) Fed. Cas. No. 7,362.

In suit by surety on deposit of Indian funds under this section and section 191 of this title, to have its claim declared a preference against funds of insolvent state bank in hands of state commissioner of finance final decree of dismissal of former action was held to estop plaintiff from suing on same cause of action, though allegations that defendant took possession of funds by virtue of assignment were first made in second action. U. S. Fidelity & Guaranty Co. v. Porter (D. C. Idaho, 1924) 3 F.(2d) 57.

In such suit, evidence was held insufficient to show that Idaho state finance commissioner took charge of affairs of bank under an assignment by resolution of board of directors, where such resolution did not purport to be an assignment but simply a determination to discontinue business. Id.

A surety paying the debt due by his

bankrupt principal, is not by this section subrogated to any privilege or advantage possessed by the United States by reason of its sovereignty. Hence the surety on a bond given to the United States, which settled and paid its obligation on the bond after the principal had been adjudged a bankrupt, is not entitled to prove its claim against the bankrupt estate after expiration of the year allowed for filing claims. In re J. Menist Co. (C. C. A. N. Y. 1923) 289 F. 229, wherein it was said: "While it is admitted that the surety company succeeded to all the rights of the United States against the bankrupt, it is not our understanding that section 3468 [this section], upon which the surety company so confidently relies, was intended to confer or does confer all the advantages which the United States might assert against the bankrupt. The section referred to merely gives to the surety the right to bring suit in its own name for the recovery of all moneys which the surety has paid, and it gives him in addition the same priority in the assertion of that right which is given to the United States. But the question here does not relate to priorities; neither does it involve the right of the surety to sue in its own name. It relates to an advantage which the United States possesses as a sovereign and which individuals do not possess."

In construing section 65 of the Act of March 2, 1799, 1 Stat. 676, from which this section was taken, the court said in U. S. v. Preston (D. C. Pa. 1824) 4 Wash. 446, 26 Fed. Cas. No. 16,087, that the expressions used in the Act did not confer jurisdiction upon the District or (then) Circuit Court in an action by the surety, when the parties were citizens of the same state. "In every instance where Congress has conferred jurisdiction upon a federal court, in cases arising under a law of the United States, it has been by terms clearly pointing out the particular court which was to exercise it."

§ 194. Compromise. Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accordingly. But the provisions of this section shall not apply to any claim arising under the postal laws. (R. S. § 3469.)

Editorial comment.—It has been suggested that some of the powers conferred by this section may now be vested in the General Accounting Office.

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1863, c. 76, § 10, 12 Stat. 740.

Notes of Decisions

1. Distinction between compromise and remission.
2. Power to compromise in general.
3. Claims subject to compromise—In general.
4. —— Claims arising under postal laws.
5. —— Judgments in general.
6. —— Judgments under contract labor act.
7. —— Claims against bondsmen on criminal recognizance.
8. —— Fines, penalties and forfeitures in general.
9. —— Fines and penalties in criminal actions.
10. —— Libel or seizure of merchandise.
11. —— Prosecution by individual to recover statutory penalties.
12. —— Claims to ownership of real estate.
13. Grounds for compromise—In general.
14. —— Uncertainty of obtaining judgment.
15. —— Circumstances of hardship to particular individuals.
16. Authority of Attorney General to compromise pending litigation.
17. Power of district attorney limited by treasury regulations.
18. Recommendation in general.
19. Authority of agents or officers to recommend compromise.
20. —— Customs officers.
21. —— Comptroller of treasury.
22. —— Auditors of treasury.
23. Discretion of agent.
24. Authority to take lands in compromise of claims.
25. Effect of compromise or release with respect to sureties or joint debtors.
26. Conclusiveness of unauthorized compromise judgment.
27. Compelling settlement.

1. Distinction between compromise and remission.—There is a clear distinction between the compromise of a doubtful

case, as under this section, and the remission of a penalty, forfeiture, or disability, as under section 642 of Title 18, Criminal Code and Criminal Procedure. The former power is a fiscal one, but the latter is in the nature of a pardoning power. (1895) 21 Op. Atty. Gen. 264. See, also, (1900) 23 Op. Atty. Gen. 18; (1899) 19 Op. Atty. Gen. 344. But see (1894) 20 Op. Atty. Gen. 727.

2. Power to compromise in general.—The Secretary of the Treasury, under this section could not exercise the powers which were specially conferred upon the Interstate Commerce Commission by paragraph c of Act Feb. 28, 1920, c. 91, § 210, as amended (temporary). (1924) 34 Op. Atty. Gen. 108.

Customs agent and special deputy collector were held without authority under this statute to compromise government's claim for additional duty. U. S. v. McNab Co. (D. C. Conn. 1924) 300 F. 391.

3. Claims subject to compromise—In general.—Where an action is brought by the United States against delinquent corporations which have failed to file a return under Corporation Tax Act, § 38, (superseded) the verdict must specifically state the amount of the penalty not less than $1,000, after which the corporations' only remedy (other than appeal) is to apply for a compromise under section 158 of Title 26, Internal Revenue, and this section. U. S. v. Acorn Roofing Co. (D. C. N. Y. 1912) 204 F. 157.

The power to compromise claims in favor of the United States which includes judgments on recognizances is vested by law in the Secretary of the Treasury with respect to all claims save those arising under the postal laws. (1897) 21 Op. Atty. Gen. 494.

While the Secretary of the Treasury has no authority to compromise a claim in favor of the United States which has been reduced to judgment, affirmed by the highest court, and which is clearly collectible, this section confers upon him the authority to compromise all other claims in favor of the United States, except those arising under the postal laws. (1902) 23 Op. Atty. Gen. 631.

The claim of the United States against the North American Commercial Company, for interest, involving disputed questions of law and fact, is clearly one subject to compromise. Id.

The power given the Secretary by section 158 of Title 26, Internal Revenue, to compromise cases arising under the internal revenue laws extends only to suits commenced by the government to recover taxes; while the ampler power of compromise given him by this section is limited to claims in favor of the United States, and does not include suits against the United States. (1901) 23 Op. Atty. Gen. 507.

The Secretary of the Treasury has no power to compromise a suit brought against a collector of internal revenue for the recovery of taxes claimed to have been illegally collected from plaintiff. Id.

The Secretary of the Treasury has no authority under this section to compromise a claim growing out of an overdue obligation, evidencing a loan made under Act Feb. 28, 1920, c. 91, § 210, as amended (temporary), by accepting an obligation of a later maturity similar in other respects to those obligations out of which the claim arose. (1924) 34 Op. Atty. Gen. 108.

4. —— Claims arising under postal laws.—Claims founded on judgment entered upon forfeited recognizances taken in prosecution of offenses against the postal laws do not arise under the postal laws, within the meaning of the exception in this section. (1885) 18 Op. Atty. Gen. 277.

5. —— Judgments in general.—The Secretary of the Treasury has no power to compromise a final judgment in favor of the United States, which is clearly collectible. The statute only authorizes a compromise of a claim which is in some way doubtful. (1900) 23 Op. Atty. Gen. 18; (1895) 21 Op. Atty. Gen. 264 (reaffirming opinion of July 11, 1894 [1894] 21 Op. Atty. Gen. 50); (1902) 23 Op. Atty. Gen. 631.

But by virtue of authority conferred by section 10 of Act March 3, 1863, c. 76 (incorporated in this section), judgments obtained by the United States in civil proceedings instituted under the internal revenue laws might be compromised by the Secretary of the Treasury, upon the report and recommendation of the attorney or agent of the government and of the Solicitor of the Treasury. (1871) 13 Op. Atty. Gen. 479.

Claims in favor of the government, founded on judgments entered upon forfeited recognizances taken in the prosecution of offenses against the postal laws, may be compromised by the Secretary of the Treasury under the provisions and upon the considerations imposed by this section. (1885) 18 Op. Atty. Gen. 277.

Judgments on recognizances may be subject to compromise. (1897) 21 Op. Atty. Gen. 494.

6. —— Judgments under contract labor act.—It was said to be doubtful if the power given to the Secretary of the Treasury by this section, to compromise "any claim" extended to a judgment recovered by the United States against a corporation in a suit for a penalty for violation of the contract labor law of February 26, 1885 (superseded). (1889) 19 Op. Atty. Gen. 344.

Neither section 2 of Act March 3, 1891 (superseded), nor any other previous law referred to in that section, authorized the Secretary of the Treasury, or any one, to settle or compromise judgments entered under section 3 of Contract-Labor Act Feb. 26, 1885 (superseded). (1893) 20 Op. Atty. Gen. 530, adhering to (1889) 19 Op. Atty. Gen. 345.

The Secretary of the Treasury has no authority, under this section to compromise a suit to recover a penalty incurred under the alien contract labor law (repealed). (1909) 27 Op. Atty. Gen. 241.

7. —— **Claims against bondsmen on criminal recognizance.**—The Secretary of the Treasury has power to compromise a claim against the surety in a forfeited recognizance for the appearance of a person charged with crime. (1868) 12 Op. Atty. Gen. 543.

Claims in favor of the government, founded on judgments entered upon forfeited recognizances taken in the prosecution of offenses against the postal laws, may be compromised by the Secretary of the Treasury. (1885) 18 Op. Atty. Gen. 277.

8. —— **Fines, penalties and forfeitures in general.**—The remedy offered by sections 17 and 18 of the act of June 22, 1874, 18 Stat. 189 (repealed) to one who was exposed to a fine, penalty, or forfeiture, in the cases provided for in that act was not exclusive, but relief, by way of compromise, might also be extended under this section. (1894) 20 Op. Atty. Gen. 727; (1879) 16 Op. Atty. Gen. 259; (1894) 20 Op. Atty. Gen. 727.

A forfeiture could not be remitted, under Act July 24, 1897, § 32 (superseded), after it had been adjudged and decreed. (1899) 22 Op. Atty. Gen. 491.

9. —— **Fines and penalties in criminal actions.**—The fines imposed after a verdict of guilty of the statutory misdemeanor of allowing certain pauper immigrants to land after being ordered to detain them, are not a claim in favor of the United States within the meaning of this section, and cannot be compromised thereunder. (1893) 20 Op. Atty. Gen. 685.

This section does not confer upon the Secretary of the Treasury any duty with respect to the administration of the criminal laws of the United States, and does not extend to the compromise of a right to or suit for a penalty imposed as a punishment for the violation of law. (1909) 27 Op. Atty. Gen. 241; U. S. v. George (C. C. N. Y. 1869) Fed. Cas. No. 15,198.

The authority conferred by this section is strictly a fiscal one, to be exercised upon fiscal considerations alone and does not extend to the compromise of a right to or suit for a penalty imposed as a punishment for the violations of law. (1911) 29 Op. Atty. Gen. 149.

But see (1871) 13 Op. Atty. Gen. 479, in which the Attorney General says that the right to compromise is understood to embrace the criminal as well as the civil liability of the defendant.

10. —— **Libel or seizure of merchandise.**—Where merchandise was seized and libeled under section 32 of Act July 24, 1897 (superseded), there was not a proper case for a compromise. (1899) 22 Op. Atty. Gen. 491.

11. —— **Prosecution by individual to recover statutory penalties.**—It has been held that the interest or share of the private prosecutor in any judgment obtained in an action under section 231 et seq., of this title, is his private property, and the United States cannot compromise, remit, or release it by pardon or otherwise. U. S. v. Griswold (D. C. Or. 1885) 24 F. 361, affirmed (C. C. 1887) 30 F. 762.

But in (1884) 18 Op. Atty. Gen. 72, it was held that the Secretary of the Treasury has power to compromise a judgment rendered in the name of the United States for damages and penalties incurred under sections 231 to 234 of this title, notwithstanding the fact that the prosecution was instituted and prosecuted to final judgment by an individual who thereby acquired an interest in the judgment. (1884) 18 Op. Atty. Gen. 72. See, also, U. S. v. Morris (N. Y. 1825) 10 Wheat. 246, 6 L. Ed. 314.

12. —— **Claims to ownership of real estate.**—This section was intended to provide for compromising claims in favor of the United States which are of a personal character. It does not extend to claims to real property to which the United States asserts ownership and has a record title. (1879) 16 Op. Atty. Gen. 385.

Certain land in Pennsylvania was set off to the United States on execution against a debtor, over which the government subsequently exercised acts of ownership by leasing and offering the same for sale. One S. claims title to the land through certain persons who, as is alleged, owned it previous to the levy on the execution; and, he being in possession, an action of ejectment has been brought by the government against him, which is still pending. He proposes to compromise by paying to the government a certain sum, and the United States to abandon the suit, and the title to the property. Held, that this section does not confer authority to entertain the compromise proposed. Id.

13. **Grounds for compromise—In general.**—In passing on cases submitted to him for compromise, under section 158 of Title 26, Internal Revenue, and this section, the Secretary of the Treasury, while he is not at liberty to act from motives merely of compassion or charity, may consider not only the pecuniary interests of the government, but take into view general considerations of justice and equity and

of public policy. (1881) 17 Op. Atty. Gen. 213.

14. —— **Uncertainty of obtaining judgment.**—The Solicitor of the Treasury may properly recommend the acceptance of a compromise offered in discharge of a claim of the United States before judgment, where the defendant is able to pay the amount of the claim, but where the district attorney advises acceptance upon the ground that, from want of evidence to establish the facts on which a verdict must depend, he doubts his ability to obtain a judgment. This case distinguished from that considered in the opinion of January 8, 1879 (16 Op. Atty. Gen. 617). (1879) 16 Op. Atty. Gen. 259.

15. —— **Circumstances of hardship to particular individuals.**—The Secretary of the Treasury is not authorized to remit or release any portion of a judgment indebtedness on considerations of hardship to particular individuals. The authority to "compromise" relates to claims of doubtful recovery or enforcement. (1879) 16 Op. Atty. Gen. 617; (1894) 21 Op. Atty. Gen. 50, distinguishing (1871) 13 Op. Atty. Gen. 479, and (1884) 18 Op. Atty. Gen. 72.

16. **Authority of Attorney General to compromise pending litigation.**—The Attorney General may absolutely dismiss or discontinue suits in which the government is interested; a fortiori he may terminate the same upon terms, at any stage, by way of compromise or settlement. (1899) 22 Op. Atty. Gen. 491.

The doubt as to the authority of the Attorney General, expressed in opinion of February 10, 1894 (20 Op. Atty. Gen. 714), not concurred in. Id.

Except as modified by section 158 of Title 26, Internal Revenue, and this section, the power to determine whether a compromise should be made of pending litigation would seem to rest with the Attorney General; such suits being necessarily under his control and subject to his direction. (1901) 23 Op. Atty. Gen. 507.

17. **Power of district attorney limited by treasury regulations.**—A district attorney had no power to compromise a claim in favor of the United States where the regulations established by the solicitor of the treasury under section 327 of Title 5, Executive Departments and Government Officers and Employees, authorized such a compromise only under special circumstances, which did not exist. U. S. v. Beebe (Ala. 1901) 21 Sup. Ct. 371, 374, 180 U. S. 343, 45 L. Ed. 563.

18. **Recommendation in general.**—There has been a substantial compliance with the statute, where, upon negotiations for compromises, there was a full and elaborate report and recommendation by the district attorney upon a similar offer to the one objected to on the ground that there was no report upon it by the district attorney. The offer reported on was not only similar, but, in substance, identical. U. S. v. Richardson (C. C. Mass. 1882) 9 F. 804.

"Under the statute, the action of the secretary is confined to the acceptance or rejection of the terms recommended by the attorney. Here the terms agreed to by the secretary were never reported or recommended by the district attorney, and the action of the secretary must, therefore, be held to be without sanction of law, and of no effect as a legal compromise." The voluntary assent of three different officials, to the terms of any compromise which it is proposed to accept, is required to make it effective. U. S. v. George (C. C. N. Y. 1869) 6 Blatchf. 406, 25 Fed. Cas. No. 15,198.

19. **Authority of agents or officers to recommend compromise.**—The "agent" referred to is one who has special charge of a claim for the purposes of collection or enforcement, in the same way that the district or special attorney has, though he need not possess their professional character. (1896) 21 Op. Atty. Gen. 361.

20. —— **Customs officers.**—A customs officer, having power to seize property claimed as forfeited for violation of the customs laws, who in the performance of his duty actually makes a seizure in order to enforce the claim of the government to the property seized, is an "agent having charge of" the claim within the meaning of this section. In such case, upon a report from him recommending that the claim be compromised, the Solicitor of the Treasury would be authorized under this section to make a recommendation to the Secretary of the Treasury concerning the same matter. (1880) 16 Op. Atty. Gen. 570.

21. —— **Comptroller of treasury.**—The comptroller of the treasury was not an "agent" within the meaning of this section. (1896) 21 Op. Atty. Gen. 361.

22. —— **Auditors of treasury.**—The auditors of the treasury were agents of the government in the broad sense of the term, but were more properly called officers, and were not intended to be included within the meaning of the word "agent" in this section. (1896) 21 Op. Atty. Gen. 367.

23. **Discretion of agent.**—An agent charged with enforcing claims due the United States may exercise reasonable discretion in the management and compromise of suits. U. S. v. Hudson (C. C. Ind. 1843) Fed. Cas. No. 15,413.

24. **Authority to take lands in compromise of claims.**—The executive may compromise doubtful claims by taking a conveyance of lands, in satisfaction, and may afterwards sell and convey them. U. S. v. Hudson (C. C. Ind. 1843) Fed. Cas. No. 15,413.

25. Effect of compromise or release with respect to sureties or joint debtors.—While a defendant is charged in execution, the debt is considered as satisfied, and a discharge of one codebtor is a discharge of all. U. S. v. Parker (C. C. Pa. 1797) Fed. Cas. No. 15,992.

Where two persons are bound jointly or jointly and severally in an obligation, the release of one will discharge the other. U. S. v. Thompson (D. C. Pa. 1836) Fed. Cas. No. 16,487.

The release of one obligor on a joint and several obligation to the United States after a judgment obtained against the other is not available to the latter. Id.

Where a joint judgment has been rendered against two defendants, a release of one of them subsequent to the judgment will discharge the other. Id.

26. Conclusiveness of unauthorized compromise judgment.—There was no ratification of an unauthorized judgment of compromise entered in favor of the United States, nor any laches in attacking it, where there was a delay of a little more than five years after the judgment was entered before steps were taken to set it aside, but this was due to the fact that no one having authority to act had any knowledge of the facts until that time. U. S. v. Beebe (Ala. 1901) 21 Sup. Ct. 371, 375, 180 U. S. 343, 45 L. Ed. 563.

27. Compelling settlement.—This section considered, and held, that state courts, which appointed receiver for insolvent corporation, could not require federal government, as condition to either filing or allowance of its claim for taxes, to submit proposition of settlement. Reinecke v. General Combustion Co. (1925) 237 Ill. App. 404.

§ 195. Purchase on execution. At every sale, on execution, at the suit of the United States, of lands or tenements of a debtor, the United States may, by such agent as the Solicitor of the Treasury shall appoint, become the purchaser thereof; but in no case shall the agent bid in behalf of the United States a greater amount than that of the judgment for which such estate may be exposed to sale, and the costs. Whenever such purchase is made, the marshal of the district in which the sale is held shall make all needful conveyances, assignments, or transfers to the United States. (R. S. § 3470.)

Historical Note

This section of the Revised Statutes was derived from Act May 26, 1824, c. 172, § 2, 4 Stat. 51.

Cross-References

The Solicitor of the Treasury is authorized to rent or sell unproductive lands or other property of the United States acquired under judicial process or otherwise in the collection of debts, by section 302 of Title 40, Public Buildings, Property, and Works; to have charge of lands and other property assigned, etc., to the United States, and of trusts created for the United States in payment of debts, and of the sale and disposal of lands so assigned, etc., by section 301 of Title 40, and to release real estate acquired by the United States in payment of a debt, where such debt is afterward paid in money, by section 306 of Title 40.

§ 196. Discharge of poor debtor; by Secretary of the Treasury. Any person imprisoned upon execution issuing from any court of the United States, for a debt due to the United States, which he is unable to pay, may, at any time after commitment, make application, in writing, to the Secretary of the Treasury, stating the circumstances of his case, and his inability to discharge the debt; and thereupon the Secretary may make, or require to be made, an examination and inquiry into the circumstances of the debtor, by the oath of the debtor, which the Secretary, or any other person by him specially appointed, is authorized to administer, or otherwise, as the Secretary shall deem necessary and expedient, to ascertain the truth; and upon proof made to his satisfaction, that the debtor is unable to pay the debt for which he is imprisoned, and that he has not concealed or made any conveyance of his estate, in trust, for himself, or with an intent to

defraud the United States, or to deprive them of their legal priority, the Secretary is authorized to receive from such debtor any deed, assignment or conveyance of his real or personal estate, or any collateral security, to the use of the United States. Upon a compliance by the debtor with such terms and conditions as the Secretary may judge reasonable and proper, the Secretary must issue his order, under his hand, to the keeper of the prison, directing him to discharge the debtor from his imprisonment under such execution. The debtor shall not be liable to be imprisoned again for the debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterward, belong to the debtor. The benefit of this section shall not be extended to any person imprisoned for any fine, forfeiture, or penalty, incurred by a breach of any law of the United States, or for moneys had and received by any officer, agent, or other person, for their use; nor shall its provisions extend to any claim arising under the postal laws. (R. S. § 3471.)

Historical Note

This section of the Revised Statutes was derived from Act June 6, 1798, c. 49, §§ 1, 3, 1 Stat. 561, 562.

Cross-References

Provisions for discharge of poor debtors from imprisonment on any judgment in a civil case, obtained in behalf of the Post-Office Department, are contained in section 385 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

1. Statute not exclusive.—The provisions of this statute, investing the Secretary of the Treasury with power to discharge imprisoned poor debtors of the United States, are not exclusive of any other rights or remedies they may have under any other statute, as under section 843 of Title 28, Judicial Code and Judiciary; such statutes are cumulative. U. S. v. Tetlow (D. C. Mass. 1872) 2 Lowell, 159, 28 Fed. Cas. No. 16,456.

2. Necessity of assignment of debtor's estate.—This act requires an assignment of the debtor's estate, real and personal, as a preliminary to his discharge and the Secretary of the Treasury has no discretion to make an exception as to the debtor's bedding, etc. (1820) 5 Op. Atty. Gen. 727.

3. Effect of assignment to United States as against prior assignments.—After an assignment under a state insolvent law, a subsequent assignment of the same property by the debtor to the United States will pass no title to the property. Hunter v. U. S. (R. I. 1831) 5 Pet. 173, 182, 8 L. Ed. 86.

4. Payment of costs.—Where imprisoned debtors are discharged on payment of costs, it is to be inferred that the condition embraced only the cost of suit in the cases in which they were imprisoned, and not the expenses of the examination made under this statute. The expenses of the examination may be paid from the judiciary fund. (1841) 3 Op. Atty. Gen. 614.

5. Discharge of debtor as release of debt or sureties thereon.—The discharge of the principal in a bond to the United States, who is imprisoned under a ca. sa. issued against him, and who has assigned all his property for the use of the United States, does not impair or affect the rights of the United States to proceed against sureties for the amount due upon the judgment, and unpaid. U. S. v. Stansbury (Md. 1828) 1 Pet. 573, 7 L. Ed. 267.

A discharge from prison by operation of law does not prevent the judgment creditor from prosecuting his judgment against the debtor's estate. Hunter v. U. S. (R. I. 1831) 5 Pet. 173, 8 L. Ed. 86.

A discharge of the principal held not a release of the debt against the surety. Id.

The discharge of a debtor from imprisonment does not discharge his co-obligors and sureties in the bond from their liability. U. S. v. Sturges (C. C. N. Y. 1826) Fed. Cas. No. 16,414. See, also, Hunt v. U. S. (C. C. Mass. 1812) 1 Gall. 32, 12 Fed. Cas. No. 6,900; (1820) 1 Op. Atty. Gen. 367.

And see, notes under section 197 of this title.

6. Discretion of secretary to refuse relief.—The Secretary of the Treasury may, in his discretion, refuse a discharge on account of circumstances taken in connection with the application of the prop-

erty of debtors to their private creditors. He may have evidence that renders them unfit subjects for relief. But the application of all the debtor's effects to the payment of private creditors is not of itself a legal bar to their release. (1833) 2 Op. Atty. Gen. 552.

§ 197. Same; by President. Whenever any person is imprisoned upon execution for a debt due to the United States, which he is unable to pay, and his case is such as does not authorize his discharge by the Secretary of the Treasury, under section 196 of this title, he may make application to the President, who, upon proof made to his satisfaction that the debtor is unable to pay the debt, and upon a compliance by the debtor with such terms and conditions as the President shall deem proper, may order the discharge of such debtor from his imprisonment. The debtor shall not be liable to be imprisoned again for the same debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterwards, belong to the debtor. (R. S. § 3472.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1817, c. 114, 3 Stat. 399.

Notes of Decisions

1. Operation and effect in general.—This section gives to the president full power to order such discharge upon such terms and conditions as he may think proper, and the party shall not be imprisoned again for the same offense. U. S. v. Ringgold (Dist. Col. 1834) 8 Pet. 150, 8 L. Ed. 899.

Where the President ordered an absolute and unconditional discharge of an imprisoned debtor without any arrangement as to the payment of fees due to the marshal from the debtor, the marshal's power or right to compel payment from him was taken away by authority of the United States, and the right of the marshal to claim his poundage fees from the government is clearly established. U. S. v. Ringgold (Dist. Col. 1834) 8 Pet. 150, 8 L. Ed. 899.

This remedy for the relief of poor debtors is not exclusive, so as to prevent relief under other statutes. U. S. v. Tetlow (D. C. Mass. 1872) Fed. Cas. No. 16,-456.

Where debtor discharged by president made subsequent agreement with marshal for payment of poundage fees and defaulted thereon, he could not be detained on a new ca. sa. U. S. v. Smith (C. C. Dist. Col. 1826) Fed. Cas. No. 16,-327.

Under this act the power of the President to discharge public debtors from imprisonment is expressly limited to cases in which the person is imprisoned upon execution; the judgment which shall have been obtained is to remain good and sufficient in law, and may be satisfied out of any estate which may then, or at any time afterwards, belong to the debtor. The act is not applicable to the case of a debtor against whom there has been yet no judgment, and who is imprisoned, not upon execution, but upon mesne process. (1818) 1 Op. Atty. Gen. 231.

He cannot discharge a debtor to the United States imprisoned on a warrant of distress issued from the Treasury Department by the letter of Act March 3, 1817, c. 114 (incorporated in this section); yet, where the debtor will confess judgment, and will submit to a capias thereon at once, and to be thereby brought within the description of the act, the President may legally discharge him. (1829) 2 Op. Atty. Gen. 285.

The president held to have no authority to order refund to debtor of moneys paid into treasury several years after such payment. (1829) 2 Op. Atty. Gen. 189.

2. Discharge of debtor as a release of sureties.—In an action against one of two sureties in a joint and several bond given to the United States, a discharge of the other surety by the president under Act March 3, 1817 (incorporated in this section) cannot be given in evidence under a plea of payment. U. S. v. Beattie (D. C. Pa. 1829) Fed. Cas. No. 14,554.

At common law the release of one obligor is the release of all the rest; and, unless this effect is prevented by the provisions of this section (which is doubtful), a discharge by the President of an insolvent debtor from imprisonment would also discharge his sureties from their liability (1820) 1 Op. Atty. Gen. 367.

See, also, Hunt v. U. S. (C. C. Mass. 1812) Fed. Cas. No. 6,900.

The discharge of a principal debtor under this act does not discharge the sureties of such debtor. (1822) 5 Op. Atty. Gen. 746.

§ 198. Debts to the United States; in what currency to be paid. All taxes and all other debts and demands than duties on imports, accruing or becoming due to the United States, may be paid in gold and silver coin, Treasury notes, United States notes, or notes of national banks. (R. S. § 3473; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249.)

Historical Note

This section is from R. S. § 3473 (Act Aug. 6. 1846, c. 90, § 18, 9 Stat. 64; Act Dec. 23, 1857, c. 1, § 6, 11 Stat. 258; Act July 17, 1861, c. 5, § 1, 12 Stat. 259; Act Aug. 5, 1861, c. 46, § 5, 12 Stat. 313; Act Feb. 12, 1862, c. 20, 12 Stat. 338; Act Feb. 25, 1862, c. 33, §§ 1, 5, 12 Stat. 345, 346; Act July 11, 1862, c. 142, § 1, 12 Stat. 532; Act March 3, 1863, c. 73, §§ 3, 5, 12 Stat. 710, 711; Act June 3, 1864, c. 106, § 23, 13 Stat. 106; Act June 30, 1864, c. 172, § 2, 13 Stat. 218), as amended by Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 249.

Cross-References

A portion of the original text of this section, omitted here, is covered by section 197 of Title 19, Customs Duties.

See the notes to that section.

Notes of Decisions

1. Taxes to which applicable.—This section has no reference to taxes imposed by state authority. Lane County v. Oregon (Or. 1869) 7 Wall. 71, 74, 19 L. Ed. 101.

2. Effect of taking drafts in payment of taxes.—When a collector of internal revenue in a rural district of Mississippi, where, owing to the lawless condition in which the rebellion, then but recently suppressed, had left the region, it was not safe to have gold and silver in one's house—in violation of the provisions of the Independent Treasury Act (incorporated in part in this section) but with an apparently good motive—openly and without indirection, and because he thought it more safe thus to act than to take gold and silver, took in payment of taxes on cotton accepted drafts drawn by the shippers of it on consignees of it in New Orleans (which was the place of deposit for taxes collected in Mississippi), afterwards (the drafts not being paid, and he having in his accounts with the government charged himself and been charged by it with the tax as if paid in gold and silver), sued the acceptors, the fact that in taking the drafts instead of gold and silver, he had acted in violation of the statutes of the United States, did not so taint his act with illegality as that he could not recover on them; the government not having repudiated his act nor called on the shipper to pay, but on the contrary, leaving the account of the collector open to see if he could not himself get the amount from the acceptor of the drafts. As between the parties the collector's charging himself with the tax and reporting it to the government as paid would be payment by the collector of the tax. Miltenberger v. Cooke (La. 1874) 18 Wall. 421, 21 L. Ed. 864.

§ 199. Same; what coin receivable. No gold or silver other than coin of standard fineness of the United States, shall be receivable in payment of dues to the United States, except as provided in sections 372 and 374 of this title.* (R. S. § 3474.)

* "Sections 372 and 374 of this title" should be "section 374 of this title, section 692 of Title 43, and section 513 of Title 48."

Editorial comment.—R. S. §§ 2366 and 3567, referred to in the original text, are now embraced in section 374 of this title, and section 692 of Title 43, Public Lands. Section 692 of Title 43 provides for the receipt of foreign coins at the values fixed under section 372 of this title, but no reason is apparent for mentioning section 372 in this section.

Section 513 of Title 48, Territories and Insular Possessions (Act Jan. 14, 1903, c. 186, §§ 1, 2, 32 Stat. 770) provides for the receipt of Hawaiian silver coins in payment of dues of the Government of the United States. As it is later than this section, this section requires modification to conform thereto.

Historical Note

This section of the Revised Statutes was derived from Act Aug. 31, 1852, c. 108, § 2, 10 Stat. 97, 98; Act Feb. 21, 1857, c. 56, §§ 2, 3, 11 Stat. 163.

§ 201. Debts of United States; national bank notes receivable for. The notes of national banks shall be received at par for all debts and demands owing by the United States to any person within the United States, except interest on the public debt, or in redemption of the national currency. (R. S. § 3475.)

Historical Note

This section of the Revised Statutes was derived from Act June 3, 1864, c. 106, § 23, 13 Stat. 106.

Cross-References

National bank notes are to be received at par in all parts of the United States in payment of taxes, excises, public lands, and all other dues to the United States, except duties on imports; and also for all salaries and other debts and demands owing by the United States to individuals, corporations, and associations within the United States, except interest on the public debt, and in redemption of the national currency, by section 109 of Title 12, Banks and Banking.

For other provisions relating to national bank notes, see section 101 et seq. of Title 12, Banks and Banking.

§ 202. Same; Treasury notes payable for. Treasury notes bearing interest may be paid to any creditor of the United States at their face value, excluding interest, or to any creditor willing to receive them at par, including interest. (R. S. § 3476.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1863, c. 73, § 2, 12 Stat. 710; Act June 30, 1864, c. 172, § 2, 13 Stat. 218.

Cross-References

Payments for sites for public buildings under the Treasury Department are to be by drafts or checks payable to the grantors of such sites, by section 260 of Title 40, Public Buildings, Property, and Works.

§ 203. Assignments of claims void. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share, thereof, except as provided in section 204 of this title,* shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. The provisions of this section shall not apply to payments for rent of post-office quarters made by postmasters to duly authorized agents of the lessors. (R. S. § 3477; May 27, 1908, c. 206, 35 Stat. 411.)

* The words "except as provided in section 204 of this title" should be omitted, or changed to read, "except as hereinafter provided," the exception being probably intended to refer to the provision now embraced in the last sentence of this section.

Historical Note

This section, except the last sentence, is from R. S. § 3477, which was derived from Act July 29, 1846, c. 66, 9 Stat. 41, and Act Feb. 26, 1853, c. 81, § 1, 10 Stat. 170. The last sentence is from the postal service appropriation act for the fiscal year 1909, cited in the credit to the text.

Notes of Decisions

1. Nature and purpose of statute.
2. Enactment, amendment, and repeal.
3. Construction and validity of act.
4. Operation and effect—In general.
5. Retroactive operation.
6. Effect as to liens.
7. Acts of officers as affecting operation of statute.
8. Necessity of strict compliance.
9. Assignments or transfers within statute—In general.
10. —— Agreements to make assignments or deliver warrants.
11. —— Merger of corporations or transfer of stock.
12. —— Agreements or powers of attorney in consideration of services.
13. —— Assignments made to secure loans or advances.
14. —— Transfer by mortgage.
15. —— Formation of partnership or corporation to perform contract.
16. —— Assignments from one partner to another.
17. —— Subcontracts let by contractor.
18. —— Assignment by way of compromise or settlement.
19. —— Assignment or transfer by operation of law.
20. —— Assignments for benefit of creditors and title of trustees or receivers in bankruptcy or insolvency.
21. —— Assignment of claims after issuance of draft in payment thereof.
22. Payment to a trustee by agreement between parties.
23. Custom and usage as affecting assignments.
24. Jurisdiction of courts to determine validity of assignments or transfers.
25. Effect of payments or delivery of warrants to assignees or attorneys in fact in disregard of act.
26. Claims within purview of statute—In general.
27. —— Claims pending before courts or commissions.
28. —— Judgments or decrees of court.
29. —— Claims not payable by warrant.
30. —— Claims against officers and employees in general.
31. —— Claims against Director General of Railroads.
32. —— Claims for customs duties illegally exacted.
33. —— Claims for sugar bounties.
34. —— Moneys due on contracts.
35. —— Claims for unlicensed use of patented invention.
36. —— Drawbacks on re-exported goods.
37. —— Claims against Chinese indemnity fund.
38. —— Claims of Indian nation.
39. —— Claims for rent.
40. —— Entryman's claim for repayment on cancellation of entry.
41. —— Money taken from prisoner accused of crime.
42. —— Witness and jury fees.
43. —— Pay accounts of army officers.
44. —— Vouchers.
45. —— Claims for goods sold Indians.
46. —— Indian annuities.
47. Right of assignor to repudiate assignment.
48. Rights of assignee under invalid assignment against persons receiving fund.
49. Right of assignee to sue in court of claims.
50. Equitable rights of assignee.
51. Effect as between parties to assignment.
52. Right of set-off as affected by assignment.
53. Effect of assignment as to rights of a surety.
54. Validity of assignments as against trustee in bankruptcy.
55. Validity as between different assignees.
56. Right of principal to sue on contract made in agent's name.
57. Judgment or decision against assignee as bar to assignor's claims.
58. Liability of officer in advising assignors as to the law.
59. Burden of proof of transfer.

1. Nature and purpose of statute.—The object of Congress by this section was to protect the government, and not the claimant, and to prevent frauds upon the treasury. Price v. Forrest (N. J. 1899) 173 U. S. 410, 19 S. Ct. 434, 43 L. Ed. 749.

The sole object of the statute is to protect the government, not the claimant, and the statute would utterly fail in its sole object if powers of attorney and assignments were irrevocable and enforceable by the courts. Milliken v. Barrow (C. C. La. 1895) 65 F. 888, affirmed (1896) 74 F. 612, 20 C. C. A. 559, certiorari denied (1897) 17 S. Ct. 991; 167 U. S. 746, 42 L. Ed. 1210.

The purpose of the statute was not to protect individuals, nor to regulate the business transactions of private persons, but to prevent frauds upon the Treasury, and it is in the nature of a statute of frauds. Buffalo Bayou, B. & C. R. Co. v. U. S. (1880) 16 Ct. Cl. 238.

2. Enactment, amendment, and repeal.—Act Feb. 26, 1853, c. 81, § 1, was reenacted in this section in almost the same words. Ball v. Halsell (Tex. 1896) 16 Sup. Ct. 554, 555, 161 U. S. 72, 40 L. Ed. 622. And thus Congress gave a legislative construction of the act of February 26, 1853, showing that such section was not considered to have been repealed by the act of February 24, 1855, 10 Stat. 612 (section 241 of Title 28, Judicial Code and Judiciary), establishing the Court of Claims. U. S. v. Gillis (Ct. Cl. 1877) 95 U. S. 407, 24 L. Ed. 503.

The restrictions of this section were not repealed by the provisions of Act March 3, 1863, 12 Stat. 765 (section 241 of Title 28, Judicial Code and Judiciary), reorganizing the Court of Claims. Martin v. U. S. (1867) 3 Ct. Cl. 64.

3. Construction and validity of act.—Where this section was passed prior to the execution of a power of attorney and assignment produced, it impaired no previous contract obligations, and infringed no vested right. (1849) 5 Op. Atty. Gen. 85.

The word "assigns" in the acts of 1894 (28 Stat. 342) and 1896 (29 Stat. 208) was intended to point out the party or parties who took over by formal assignment all rights to or interest in a contract, or such measure of rights and interest as carve out a complete share in the undertaking itself, with all its risks and incidents. The assignee recognized must take in accordance with the method and formalities provided by this section. (1898) 22 Op. Atty. Gen. 156.

4. Operation and effect—In general.—The transfer of a portion of a claim by means of a bill of exchange is in violation and evasion of this section and void. Peirce v. U. S. (1865) 1 Ct. Cl. 270, affirmed The Floyd Acceptances (1868) 7 Wall. 666, 19 L. Ed. 169.

This section has been held to include all specific assignments, in whatever form, of any claim against the United States under a statute or treaty, whether to be presented to one of the executive departments or to be prosecuted in the Court of Claims, and to make every such assignment void unless it has been assented to by the United States. Ball v. Halsell (Tex. 1896) 161 U. S. 72, 16 S. Ct. 554, 40 L. Ed. 622.

This section does not prohibit claimant from assigning a claim against the United States. Lay v. Lay (Miss. 1918) 39 S. Ct. 13, 248 U. S. 24, 63 L. Ed. 103.

This section does not prevent giving effect to an assignment by operation of law after the claim has been allowed. Houston v. Ormes (Dist. Col. 1920) 40 S. Ct. 369, 252 U. S. 469, 64 L. Ed. 667, affirming decree McAdoo v. Ormes (1918), 47 App. D. C. 364.

The practical effect of the law as interpreted is that assignments of claims against the government, whatever be the consideration, are mere naked powers of attorney, revocable at pleasure, in no case obligatory upon the government. Lopez v. U. S. (1889) 24 Ct. Cl. 84.

This section prohibits the assignment of any claim against the government for a patent infringement prior to the time plaintiff became the owner of the patent. Brothers v. U. S. (1917) 52 Ct. Cl. 462, affirmed (1919) 39 S. Ct. 426, 250 U. S. 88, 63 L. Ed. 859.

A warrant of attorney to draw money from the Treasury upon a claim not transferred or assigned is within this section, and must be executed subsequent to the date of the warrant for the payment of the claim. (1858) 9 Op. Atty. Gen. 188.

The provisions in Act March 3, 1875, c. 134, and Act June 19, 1878, c. 313, that certain payments be made to a contractor, his assigns, or legal representatives, were held not to remove the contract from the operation of this section. (1878) 16 Op. Atty. Gen. 153.

When a balance is due a contractor, and there are conflicting claimants, the proper course is to keep the custody of the balance until the respective rights of claimants to it have been determined by a decree of the court. (1893) 20 Op. Atty. Gen. 578.

The head of a Department is prohibited by this section from co-operating with a contractor having a balance due him in the Treasury in assigning this balance to an outsider before the issuing of a warrant or warrants for payment of the amount proposed to be assigned. Id.

Under this section assignments of claims against United States government, unless made in accordance with statute, are void. Porter v. Title Guaranty & Surety Co. (1912) 121 P. 548, 21 Idaho, 312.

A transfer of a claim on the government is invalid, unless the claim has been adjudicated and a warrant issued for its payment. Wood's Ex'rs v. Dialogue (Pa. 1881) 38 Leg. Int. 260.

"It has been several times declared by this court that the statute was intended solely for the protection of the government and its officers during the adjustment of claims, and that, after allowance, the protection may be invoked or waived, as they, in their judgment, deem proper." Goodman v. Niblack (Ind. 1880) 102 U. S. 556, 560, 26 L. Ed. 229; Price v. Forrest (N. J. 1899) 173 U. S. 410, 19 S. Ct. 434, 43 L. Ed. 749. But see McGowan v. Parish (Dist. of Col. 1915) 237 U. S. 285, 35 S. Ct. 543, 59 L. Ed. 955.

5. Retroactive operation.—Warrants of attorney executed before the date of act were exempt from its provisions. (1858) 9 Op. Atty. Gen. 188.

6. Effect as to liens.—A creditor, who sold boilers to the bankrupt with the understanding that they were to be used in a vessel being built under contract for the United States, was held to have no lien upon the boilers, nor upon the contract or its proceeds, in view of this section, making void the assignment of any interest in government contracts. In re Waters-Colver Co. (D. C. N. Y. 1913) 206 F. 845.

7. Acts of officers as affecting operation of statute.—No officer of the government can do any act which will take assignments and powers of attorney out of the statute. Hitchcock v. U. S. (1892) 27 Ct. Cl. 185, affirmed (1896) 17 S. Ct. 142, 164 U. S. 227, 41 L. Ed. 412.

Certain contractors agreed to build for the lighthouse board a steamer for $66,-900, payable in installments at specified stages in the work; the contract and all moneys due thereunder to be forfeited for breach. Materialmen, who had been promised payment of their claims out of certain installments, obtained from the contractors a power of attorney authorizing them to collect $6,000 out of the last installment, and placed it on file with the naval secretary of the lighthouse board, who promised that if they would continue the delivery of materials the government would pay their claim to the amount of $6,000. At this time the government had the right to annul the contract for breach. In correspondence with the naval secretary, who was in doubt whether the money could be thus paid under this section, and section 15 of Title 41, Public Contracts, the secretary of the treasury stated that the claim could be paid only on condition that the account for the money when due under the contract should be stated in the name of the contractors, and receipted for by them before payment to the materialmen. Several months later the contract was forfeited for breach. The last installment never became due to the contractors, and the vessel was completed by the board at a cost, not including this claim, of $726.10 less than the contract price. It was held, that the materialman could recover from the government only the sum of $726.10. Coates v. U. S. (Md. 1893) 53 F. 989, 4 C. C. A. 138.

Under this section and section 15 of Title 41, Public Contracts, a person having a contract with the United States cannot transfer or assign any part of the money coming to him thereunder so as to affect any one but himself, and the acceptance by a disbursing agent of the United States of an order upon such fund has no validity against third persons. Greenville Sav. Bank v. Lawrence (S. C. 1896) 76 F. 545, 22 C. C. A. 646, affirming decree Lawrence v. U. S. (C. C. 1896) 71 F. 228.

8. Necessity of strict compliance.—Assignment of claim against the United States held void as between assignor and assignee as well as between all other parties, for failure to comply absolutely with this section. Manhattan Commercial Co. v. Paul (1916) 111 N. E. 76, 216 N. Y. 481.

9. Assignments or transfers within statute—In general.—An equitable lien on all moneys accruing under a contract with the United States is not invalidated by this section; the sole purpose of the statute being to protect the government, and not the interests of the parties. Jennings v. Whitney (1916) 112 N. E. 655, 224 Mass. 138.

Where the bondsmen take charge of and complete the work of a government contractor, under agreement with the contractor, and in pursuance of that agreement the contractor executes and delivers a power of attorney to the bondsmen authorizing them to receive and receipt for the money on the contract, the head of the department may recognize the power of attorney of the contractor to the bondsmen, and receipted vouchers signed by the bondsmen as attorneys of the contractor, if properly filled, will discharge the government. (1889) 19 Op. Atty. Gen. 240.

An assignment by contractors for public work to the surety on their bond of any sums which might become due them from the government under the contract to indemnify the surety for liability it might incur on the bond is void under this section. London, etc., Indemnity Co. v. Endres (C. C. A. Kan. 1923) 290 F. 98.

Orders accepted by the drawee, to be paid "out of any moneys received by me from the United States on the claim of" the drawer, give the payee no interest in the claim of the drawer against the United States, and no lien upon the fund arising out of the claim. Spofford v. Kirk (Dist. of Col. 1878) 97 U. S. 484, 24 L. Ed. 1032; American Surety Co. v. U. S. (1898) 76 Miss. 289, 24 So. 388.

10. —— Agreements to make assignments or deliver warrants.—Under this section, a contract under which petitioner furnished automobile parts to bankrupt, to be used in filling a contract with the government, and which provided that all warrants received by bankrupt under its contract should be indorsed by it as agent and delivered to petitioner, was held void, and such warrants received by the trustee were held to inure to the benefit of general creditors. In re Hudford Co. of New York (C. C. A. N. Y. 1919) 257 F. 722.

An agreement between contractors with the United States government and a creditor that the contractors will not receive payments except in the presence of such creditor, and will immediately transfer the same to him does not contravene this

section, which is merely for the convenience and protection of the government. Leonard v. Whaley (1895) 91 Hun, 304, 36 N. Y. S. 147.

This section invalidates a bond given by a government contractor to deliver to an assignee of its claims against the government the warrants issued thereon. Levison v. Illinois Surety Co. (1918) 118 N. E. 641, 222 N. Y. 280, reversing judgment (1915) 153 N. Y. S. 70, 167 App. Div. 747.

11. —— Merger of corporations or transfer of stock.—A transfer of stock by a stockholder of a corporation which holds a claim against the government cannot be regarded as the assignment of a portion of the claim within the meaning of the statutes. Kellogg Bridge Co. v. U. S. (1879) 15 Ct. Cl. 111.

This section does not prevent the allowance of a claim originally payable to a railroad company the right to which had vested in another corporation formed by the merger of that company and another under the provisions of Civ. Code Ga. 1895, § 2173, and Gen. St. Fla. 1906, § 2812, since Congress intended merely to prevent evils resulting from trafficking in claims, and not to discourage or hinder the proper merger of corporations as authorized by the states. Seaboard Air Line Ry. v. U. S. (Ct. Cl. 1921) 41 S. Ct. 611, 256 U. S. 655, 65 L. Ed. 1149, reversing judgment (1918) 53 Ct. Cl. 107.

12. —— Agreements or powers of attorney in consideration of services.—An attorney with whom a claimant entered into an agreement that he should take charge of the claim and prosecute it before Congress as the agent and attorney of the claimant, for which service he should receive twenty-five per cent. of whatever sum Congress might allow in payment of the claim, such compensation being wholly contingent, has no lien on the fund appropriated by Congress for the payment of the claim. A claim set up to a specific part of the money appropriated is clearly within this statute. Trist v. Child (Dist. Col. 1874) 21 Wall. 441, 22 L. Ed. 623; (1878) 16 Op. Atty. Gen. 227; Manning v. Leighton (1891) 65 Vt. 56, 28 A. 630.

A. employed B. to collect a claim against the United States. Before its allowance, or the issue of a warrant for its payment, he drew, in favor of C., an order on B., payable out of any moneys coming into his hands on account of said claim. B. accepted it, and D. became the holder of it in good faith and for value. A. refused to recognize its validity after the warrant in his favor had been issued, or to indorse the latter. It was held: (1) That the order became upon its acceptance, and in the absence of any statutory prohibition, an equitable assignment pro tanto of the claim; (2) that, under this section, the accepted order was void, and that D. took no interest in the claim, and acquired no lien upon the fund arising therefrom. Spofford v. Kirk (Dist. Col. 1878) 97 U. S. 484, 488, 24 L. Ed. 1032.

A contract between a claimant and an attorney authorizing the attorney to give all necessary acquittances and receipts for one-half of all money which may be received by him for prosecuting claims against the United States government, on account of the depredations of Indians, was contrary to the express terms of this section. Ball v. Halsell (Tex. 1896) 161 U. S. 72, 16 S. Ct. 554, 40 L. Ed. 622.

So far as the contract for the prosecution of a claim against the United States makes the payment of the compensation for services rendered thereunder a lien upon the claim and upon any draft, money, or evidence of indebtedness which may be issued thereon, it is repugnant to this section. Nutt v. Knut (Miss. 1906) 26 S. Ct. 216, 200 U. S. 13, 50 L. Ed. 348, affirming decree (1904) 36 So. 689, 84 Miss. 465. See, also, McGowan v. Parish (Dist. Col. 1915) 237 U. S. 285, 35 S. Ct. 543, 59 L. Ed. 955, reversing (1912) 39 App. Cas. (D. C.) 184.

A provision of a contract employing an attorney on a contingent fee to prosecute a claim against the government that the fee should be a lien on any warrant issued in payment of the claim was void under this section. Calhoun v. Massie (Va. 1920) 40 S. Ct. 474, 253 U. S. 170, 64 L. Ed. 843, affirming judgment (1918) 97 S. E. 576.

Omnibus Claims Act March 4, 1915, § 4, providing that no part of the amount of any item appropriated by that act shall be paid or delivered to any agent or attorney for services in excess of 20 per cent. of the amount appropriated, and that it shall be unlawful for any attorney to withhold or receive any sum in excess of the specified percentage any contract to the contrary notwithstanding, limits the amount recoverable by the attorney from the claimant, and not merely the amount payable from the specific fund received from the government. Id.

Under Omnibus Claims Act March 4, 1915, making it unlawful for any attorney to collect any sum exceeding 20 per cent. of the amount of any item appropriated, any contract to the contrary notwithstanding, where an attorney for a claimant received from the treasury a warrant for 20 per cent. of the sum appropriated, he took under the act, and could not repudiate its provisions and any reservation by him of his rights under the contract was futile. Id.

A power of attorney for the collection of a claim against the government, not executed in the presence of "two attesting witnesses after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment

thereof," is void under this section. Stow v. U. S. (1869) 5 Ct. Cl. 362, affirmed (1874) 19 Wall. 13, 22 L. Ed. 144.

Where a claimant executed a power of attorney to another, authorizing him to prosecute a claim before Congress and to appoint a third person to assist him, and therein assigned to each of them one-fourth of what might be recovered, authorizing them to receive the same; and the claim being subsequently allowed by Congress (by Act March 3, 1849, c. 164), and demand of payment of one-half thereof, pursuant to said assignment, being made at the Treasury by the two attorneys, it was objected to by the administrators of the claimant, and refused on account of noncompliance with this section. It has held, that this section clearly prohibited payment to the attorneys, except they produced a warrant of attorney executed subsequent to the passage of the act allowing the claim, reciting the amount, properly executed, attested, and acknowledged. (1849) 5 Op. Atty. Gen. 85.

A contract between an attorney and a client for the collection of a claim against the United States, in which it is stipulated that the attorney shall present, prosecute, and recover the claim as the agent and attorney of the client, is "a power of attorney, order, or other authority for receiving payment" of the money so recovered within the meaning of this section, and, unless executed in accordance with the provisions thereof, is absolutely null and void. (1904) 25 Op. Atty. Gen. 279.

A., as administratrix of the estate of B., entered into a contract with C., an attorney, by which C. was to prosecute, at his own expense, a claim for cotton of B. seized by the government in 1863; if C. recovered nothing he was to receive nothing for his fees and disbursements, but if he should be successful, in whole or in part, he was to pay A. only $50 per bale for every bale he should recover judgment for, and the balance was to go to him. Full power was given him to execute all necessary vouchers, receipts, etc. It was held, that the agreement was a mere personal contract for a contingent fee, and was not an assignment or transfer of the claim, or any part or share of it, or interest in it to C., absolute or conditional; and therefore was not within the prohibition of this section. Wassell v. Armstrong (1880) 35 Ark. 247.

An attorney's agreement to prosecute a claim against the United States for a fee contingent on the amount allowed is not a pro tanto assignment of the claim to the attorney, within this section. Child v. Trist (D. C. 1873) 1 MacArthur, 1.

An assignment by a client of a portion of a claim which he is prosecuting against the government, as a fee for his services, comes within the meaning of this section, which prohibits the assignment of claims against the United States. Woods v. Dickinson (D. C. 1889) 7 Mackey, 301.

A contract by a claimant, employing an attorney to prosecute a claim against the United States in the Court of Claims on a contingent fee of 50 per cent. of the amount recovered, and stipulating that the fee shall be a lien on any draft issued by the government in payment of the claim, is not an assignment of a claim against the United States, within the meaning of section 15 of Title 41, Public Contracts, or this section. Roberts v. Consaul (1905) 24 App. D. C. 551.

A contract between an attorney and a person having a claim against the United States, whereby the attorney is expressly given a lien for his fee on any check which may be issued by the United States in settlement of the claim, is not within the meaning of this section, prohibiting the assignment of claims against the United States, or of any interest therein. Jones v. Rutherford (1905) 26 App. D. C. 114.

A contract by a claimant giving an attorney a lien on the claim for the amount of his services in prosecuting it is void under this section, if entered into before the allowance of the claim. Nor can the attorney defeat the terms of this section by claiming an equitable lien on the amount of the claim subsequently allowed. Lindberg v. Humphrey (App. D. C. 1923) 289 F. 901, 53 App. Cas. 243.

Contract by one holding claim against United States government to pay attorney for services to be rendered in obtaining payment of claim is valid, although it gives attorney no interest or share in particular money paid over by government. King v. Pons (Fla. 1919) 81 So. 519.

Contract between one having a claim against United States government and an attorney, purporting to give attorney a lien on any check or medium of payment issued in settlement of the claim as security for the fee agreed to be paid, is void under this section, in so far as attempting to create a lien. Id.

An act of Congress of 1915 appropriating money to settle claim against government, providing that not over 20 per cent. of appropriation shall be paid to any agent or attorney for claimant, does not affect validity of contract between claimant's administrator and an attorney for prosecuting the claim, or make administrator's payment of agreed compensation, after money came into his hands, unlawful, in view of this section. Id.

An agreement that an attorney would prosecute a claim against the United States, and should receive for his services 20 per cent. of the amount of such claim when collected, was within this section. Jones v. Blacklidge (1872) 9 Kan. 562, 12 Am. Rep. 503.

An agreement to pay an attorney a percentage of any amount recovered from

federal government is not invalid under this section. Black v. O'Hara (1917) 194 S. W. 811, 175 Ky. 623.

An agreement between an attorney at law and his client for the payment of a certain sum for the former's professional services in prosecuting Alabama claims of the client recited that the sum agreed upon "should in some form be charged upon or paid out of any sums to be recovered on the Alabama claims." Held, that there was no effective assignment to the attorney of any right in those claims, and that, even if there were, this section would be a bar. Newell v. West (1889) 149 Mass. 520, 21 N. E. 954.

In an agreement reciting that the holders of certain claims for damages by Confederate cruisers constituted K. their true and lawful attorney, in their names to collect said claims, and agreeing in consideration of the services of K., that he and his legal representatives or assigns should be entitled to retain 25 per cent. of the amount collected, was more than a power of attorney, and was not void as being in conflict with Act June 23, 1874, c. 459, prohibiting any assignment or transfer of claims such as K. was employed to collect, to secure services rendered. Grapel v. Hodges (1889) 112 N. Y. 419, 20 N. E. 542.

13. —— Assignments made to secure loans or advances.—There is no claim against the United States, and therefore no assignment of it, within this section, where one having a contract to do work for the United States, before doing any work under it, contracts with another to obtain advances with which to do the work, agreeing to make payment for the advances out of the moneys to be received from the government for the work, and executes a power of attorney to such other person, authorizing him to collect all money to become due on the contract with the government. Dulaney v. Scudder (Miss. 1899) 94 F. 6, 36 C. C. A. 52.

The assignment by a bankrupt to a bank, as collateral security for money borrowed, of claims against the United States under contracts only partially performed, such assignments not being witnessed or acknowledged, was ineffective, and the claims passed by operation of law to the bankrupt's trustee for the benefit of general creditors. National Bank of Commerce of Seattle v. Downie (Wash. 1908) 161 F. 839, 88 C. C. A. 657, affirmed (1910) 31 S. Ct. 89, 218 U. S. 345, 54 L. Ed. 1065.

Under this section an assignment by a manufacturer of moneys to become due from the government as security for money loaned to enable the completion of a government contract is void, and creates no lien on the funds paid by the government to receivers of the assignor. Hall v. Chandler (C. C. A. Mass. 1923) 289 F. 675, appeal dismissed (1925) 46 S. Ct. 13, 269 U. S. 592, 70 L. Ed. 429, and (1925) 46 S. Ct. 16, 269 U. S. 529, 70 L. Ed. 396.

A power of attorney from a government contractor to a bank to secure future advances was held void in Hitchcock v. U. S. (1892) 27 Ct. Cl. 185, affirmed (1896) 17 S. Ct. 142, 164 U. S. 227, 41 L. Ed. 412.

Section 15 of Title 41, Public Contracts, declares that no contract with the United States shall be transferred, by the party to whom such contract is given, to any other party, and that such transfer shall cause the annulment of the contract so far as the United States is concerned, and this section declares the formalities to be observed on the transfer of any claim against the United States. Held, that where contractors for a government building were unable to complete the work, and an agreement was made between them and their creditors whereby the creditors were to provide the funds necessary for completion, and moneys received from the government were to be distributed among the creditors, and one of the creditors thereafter, on completion of the work, obtaining all the money due under the contract, applied it to its debt, and was subsequently garnished in a suit against the other creditors, the United States not being interested, section 15 of Title 41, and this section had no application to the determination of the parties' rights. Ferwell v. American Surety Co. (1900) 28 So. 755, 80 Miss. 782, 92 Am. St. Rep. 625.

A shipbuilding company having contracts with the federal government for the building of several vessels, by depositing the contracts in a bank with power of attorney authorizing it to collect payments by the government on the contract, on the faith of which the bank made loans to the company, effectuated a valid equitable assignment of the contracts. S. H. Hawes & Co. v. Wm. R. Trigg Co. (Va. 1909) 65 S. E. 538, affirmed in part and reversed in part (1910) 31 S. Ct. 49, 218 U. S. 452, 54 L. Ed. 1107.

14. —— Transfer by mortgage.—A voluntary mortgage for the security of a debt, finally completed and made absolute by judicial sale, comes within this section, which provides that the assignment of a claim against the United States must be made in the presence of two attesting witnesses, after the allowance of the claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. St. Paul & D. R. Co. v. U. S. (Ct. Cl. 1885) 5 S. Ct. 366, 367, 112 U. S. 733, 28 L. Ed. 861; Flint & P. M. R. Co. v. U. S. (Ct. Cl. 1885) 5 S. Ct. 368, 112 U. S. 737, 28 L. Ed. 862.

The Attorney-General advised the Postmaster-General that it was not incumbent

on him to have the account in the above cases audited until evidence had been presented sufficient to satisfy him that the railroad company, mortgagor, had maintained its existence, and that there were proper officers to receive and receipt for the money. But in view of the mortgage and foreclosure of the franchise to be a corporation, and of the sales of all and every right of the company, the presumption that the corporation still existed was overthrown, and the burden of proving its existence was upon the claimant. (1885) 18 Op. Atty. Gen. 129.

15. —— Formation of partnership or corporation to perform contract.—This section and section 15 of Title 41, Public Contracts, do not invalidate a partnership formed between a party to whom the government has given the contract and other persons whose means are required to carry it out; and written promises to such moneyed partners by the other to pay back out of the contract money his portion of the fund advanced do not bring the case within those sections. Hobbs v. McLean (Iowa, 1886) 6 S. Ct. 870, 117 U. S. 567, 29 L. Ed. 940. To the same effect, see Mechanics' Bank, etc., Co. v. Knoxville, etc., R. Co. (Tenn. 1923) 251 S. W. 906.

A contract of partnership to bid for and carry out a mail contract in the name of one partner has been held not invalid, under this section, as an assignment of a claim against the United States. Hegness v. Chilberg (Alaska, 1915) 224 F. 28, 139 C. C. A. 492.

A corporation formed to carry out a government contract was held not an assignee of the contract nor a subcontractor, but a mere agent for the contractor. U. S. v. Axman (C. C. Cal. 1906) 152 F. 816.

16. —— Assignments from one partner to another.—An assignment of the claim by one partner to another is void under this section. Cooper v. U. S. (1863) 1 Ct. Cl. 85.

17. —— Subcontracts let by contractor.—That a contractor for doing certain work for the government may make subcontracts, in the execution of the work undertaken, is nowhere forbidden; and neither this section nor section 15 of Title 41, Public Contracts, applies to such case. Manning v. Ellicott (1896) 9 App. D. C. 71.

An agreement by a sculptor that, in the event of an award to him by a congressional commission of a contract for a certain statute for which he had submitted designs, he would enter into a contract with a contractor for stone work for the erection by the latter of a granite pedestal for such statute, and that to the amount of such pedestal, the contractor should be made a party to the contract between the commission and the sculptor, is not void under either this section or section 15 of Title 41, Public Contracts, providing that the transfer of a contract with the United States, or any interest therein, shall cause the annulment of the contract transferred so far as the United States are concerned. Id.

18. —— Assignment by way of compromise or settlement.—Where a shipowner conveys in general terms his interest in a ship and voyage to one of his co-owners, including "any claims by the owners of said ship against the United States government, * * * being a compromise sale and settlement of all matters pertaining to the ship," and congress subsequently appropriates money for a preexisting claim of such ship against the government, the conveyance is not void under this section. Jernegan v. Osborn (1892) 155 Mass. 207, 29 N. E. 520.

19. —— Assignment or transfer by operation of law.—The United States may, in their discretion, exercised through the proper officers, pay a debt due to the estate of a decedent either to the administrator appointed in the state of his domicile, or to the ancillary administrator duly appointed in the District of Columbia. Wyman v. U. S. (Dist. Col. 1884) 3 S. Ct. 417, 109 U. S. 654, 27 L. Ed. 1068.

Where, by special act of congress, money is made payable to certain minor children in Louisiana, a payment in the District of Columbia, to the attorney of their tutrix, appointed under the laws of Louisiana, is a valid payment. Taylor v. Bemiss (Dist. Col. 1884) 3 S. Ct. 441, 110 U. S. 42, 28 L. Ed. 64.

An order of a judicial tribunal having jurisdiction of the parties, appointing a receiver of a claim against the government and ordering the claimant to assign the same to such receiver, to be held subject to the order of the court for the benefit of those entitled thereto, cannot be regarded as prohibited by this section. Price v. Forrest (N. J. 1899) 173 U. S. 410, 19 S. Ct. 434, 43 L. Ed. 749 (see Price v. Forrest [1896] 54 N. J. Eq. 669, 35 A. 1075, affirmed [Err. & App. 1897] 37 A. 1117, and Forrest v. Price [1893] 52 N. J. Eq. 16, 29 A. 215, affirmed [1895] 35 A. 1130, 53 N. J. Eq. 693); Redfield v. U. S. (1892) 27 Ct. Cl. 393.

This statute applies only to cases of voluntary assignment of demands against the government. It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs, devisees, or assignees in bankruptcy is not within the evil at which the statute aimed. National Bank of Commerce v. Downie (Or. 1910) 218 U. S. 345, 31 S. Ct. 89, 54 L. Ed. 1065 (wherein the court said: "This construction of the statute was recognized as settled law in Goodman v. Niblack [Ind. 1880] 102 U. S. 556, 560, 26 L. Ed. 229; St. Paul, etc., R. Co. v. U. S. [Ct. Cl. 1885] 112 U. S. 733,

736, 5 S. Ct. 366, 28 L. Ed. 861; Butler v. Goreley [Mass. 1892] 146 U. S. 303, 311, 13 S. Ct. 84, 36 L. Ed. 981; Hager v. Swayne [Cal. 1893] 149 U. S. 242, 247, 13 S. Ct. 841, 37 L. Ed. 719, and Ball v. Halsell [Tex. 1896] 161 U. S. 72, 79, 16 S. Ct. 554, 40 L. Ed. 622"); Erwin v. U. S. (Ct. Cl. 1878) 97 U. S. 392, 24 L. Ed. 1065; Williamson v. Colcord (D. C Me. 1875) 1 Hask. 620, 30 Fed. Cas. No. 17,752. To the same effect see Mechanics' Bank, etc., Co. v. Knoxville, etc., R. Co. (Tenn. 1923) 251 S. W. 906.

This section does not apply to a transfer of claims through a judicial sale under an order of court. Western Pac. Co. v. U. S. (Ct. Cl. 1925) 268 U. S. 271, 45 S. Ct. 503, 69 L. Ed. 951, reversing (1924) 59 Ct. Cl. 67. The court said: "The object of this section is to protect the Government and prevent frauds upon the Treasury. It applies only to cases of voluntary assignment of demands against the Government, and does not embrace cases where there has been a transfer of title by operation of law. United States v. Gillis (Ct. Cl. 1877) 95 U. S. 407; Erwin v. United States (Ct. Cl. 1878) 97 U. S. 392, 397; Goodman v. Niblack (Ind. 1880) 102 U. S. 56; Price v. Forrest (N. J. 1899) 173 U. S. 410. And see Seaboard Air Line v. United States (Ct. Cl. 1921) 256 U. S. 655. In Price v. Forrest, supra, p. 422, it was specifically held that this section did not apply to the assignment of a claim to a receiver under the order of a court, this being 'the act of the law.' So here the sale to the claimant of so much of the claims as had accrued to the receivers for transportation furnished by them, was clearly a transfer by operation of law and did not come within the prohibition of the statute. As to the claims for the transportation that had been previously furnished by the Western Pacific Railway, the Government relies upon St. Paul Railroad v. United States (Ct. Cl. 1885) 112 U. S. 733, in which there was a general statement—not necessarily involved in the decision of the case—that a voluntary transfer of a claim against the United States, by way of mortgage, finally completed and made absolute by a judicial sale, falls within the prohibition of section 3477 [this section]. We need not now determine the effect to be given to this general statement, nor whether it could have any application where the mortgage does not specifically transfer existing claims against the United States. In any event it has no application to the present case. The findings of fact do not show that these claims were included in any mortgage executed by the railway or were acquired by the claimant through its foreclosure, but merely that they were acquired through a judicial sale pursuant to a decree of the court. So far as appears from the findings this was merely a sale of assets of the railway not covered by a mortgage, bringing the case in this aspect within the doctrine of Price v. Forrest, supra, as a transfer of the claims by operation of law."

The appointment of a receiver, by a state court, of particular claims against the United States, with authority to bring suit against the United States in the Court of Claims, is a proceeding in the nature of an equitable attachment against the United States in favor of a single creditor and the transfer of the claim to a receiver for the benefit of such creditor alone, and to a decree giving such authority the Court of Claims will give no force. Howes v. U. S. (1889) 24 Ct. Cl. 170.

It is not inconsistent with this section for a court for the protection of a creditor to forbid a claimant to collect his demand except through a receiver. Borcherling v. U. S. (1900) 35 Ct. Cl. 311, affirmed (1902) 22 S. Ct. 607, 185 U. S. 223, 46 L. Ed. 884.

Where the transfer or assignment of the assets of an insolvent corporation, including a claim against the United States, is made to another corporation, by order of court, it is by operation of law and not in violation of this section. Davis Sewing Machine Co. v. U. S. (1925) 60 Ct. Cl. 201, affirmed (1927) 47 S. Ct. 352, 71 L. Ed. —.

A payment to a person acting under a power of attorney from one of several executors is valid, coexecutors being regarded in law as an individual person, and the act of any one of them, in respect to the administration of the effects, as the act of all. (1827) 2 Op. Atty. Gen. 66.

This section will not prevent a court of competent jurisdiction as to the subject-matter and parties from making such orders as may be necessary and appropriate to prevent one who has a claim for money against the government from withdrawing the proceeds of such claim from the reach of his creditors, provided such orders do not interfere with the examination and allowance or rejection of such claim by the proper officers of the government, nor in anywise obstruct any action that such officer may legally take under the statutes relating to the allowance or payment of claims against the United States. Sanborn v. Maxwell (1901) 18 App. D. C. 245.

20. —— Assignments for benefit of creditors and title of trustees or receivers in bankruptcy or insolvency.—A voluntary assignment for the benefit of creditors or an assignment by operation of law does not come within the section. Erwin v. U. S. (Ct. Cl. 1878) 97 U. S. 392, 24 L. Ed. 1065; Goodman v. Niblack (Ind. 1881) 102 U. S. 556, 26 L. Ed. 229; Butler v. Goreley (Mass. 1892) 13 S. Ct. 84, 146 U. S. 303, 36 L. Ed. 981, affirming Goreley v. Butler (1888) 16 N. E. 734, and distinguishing St. Paul & D. R. Co. v. U. S. (Ct. Cl. 1885) 5

S. Ct. 366, 112 U. S. 733, 28 L. Ed. 861; Calder v. Henderson (La. 1893) 54 F. 802, 4 C. C. A. 584; In re Ghazal (N. Y. 1909) 174 F. 809, 98 C. C. A. 517; Milliken v. Barrow (C. C. La. 1895) 65 F. 888, affirmed (1896) 74 F. 612, 20 C. C. A. 559, certiorari denied (1897) 17 S. Ct. 991, 167 U. S. 746, 42 L. Ed. 1210; Burke v. U. S. (1877) 13 Ct. Cl. 231; Morgan v. U. S. (1878) 14 Ct. Cl. 319; St. Paul & D. R. Co. v. U. S. (1883) 18 Ct. Cl. 405, affirmed (1885) 5 S. Ct. 366, 112 U. S. 733, 28 L. Ed. 861; Flint & P. M. R. Co. v. U. S., 18 Ct. Cl. 420, affirmed (1885) 5 S. Ct. 368, 112 U. S. 762, 58 L. Ed. 862; George Howes & Co. v. U. S. (1889) 24 Ct. Cl. 170; Redfield v. U. S. (1892) 27 Ct. Cl. 393; McKay v. U. S. (1892) 27 Ct. Cl. 422; American Tobacco Co. v. U. S. (1897) 32 Ct. Cl. 207, affirmed (1897) 17 S. Ct. 619, 166 U. S. 468, 41 L. Ed. 1081; People's Trust Co. v. U. S. (1903) 38 Ct. Cl. 359; (1894) 21 Op. Atty. Gen. 75; Price v. Forrest (1896) 35 A. 1075, 54 N. J. Eq. 669, affirmed (1897) 37 A. 1117; Stanford v. Lockwood (N. Y. 1881) 24 Hun, 291.

A voluntary assignment by an insolvent debtor, for the benefit of creditors, is valid to pass title to a claim against the United States. Butler v. Goreley (Mass. 1892) 146 U. S. 303, 13 S. Ct. 84, 36 L. Ed. 981; Goodman v. Niblack (Ind. 1880) 102 U. S. 556, 26 L. Ed. 229; Calder v. Henderson (La. 1893) 54 F. 802, 4 C. C. A. 584.

Bankrupt's unliquidated claim against treasury department for refund of excess income tax payments was held a "right of action" arising from unlawful taking of bankrupt's property, vesting in trustee under section 110 of Title 11, Bankruptcy, notwithstanding right was unassignable by virtue of this section. Chandler v. Nathans (C. C. A. Pa. 1925) 6 F. (2d) 725.

As between the assignee in bankruptcy and the administratrix of a judgment creditor of the United States, the court held that the assignee in bankruptcy was entitled to the fund. The Peck Motion (1879) 15 Ct. Cl. 364.

In re Ghazal (N. Y. 1909) 174 F. 809, 98 C. C. A. 517, it was held that a bankrupt could not have assigned an expectancy of reward for information concerning smugglers prior to the allowance of the reward by the secretary of the treasury, which did not occur until after the bankruptcy adjudication, and that the reward subsequently awarded passed to the bankrupt, and not to his trustee for the benefit of creditors.

21. —— Assignment of claims after issuance of draft in payment thereof.—When it is settled by the decree of court of competent jurisdiction that the holder of certain treasury drafts has no right or title to them, nor to the warrants or claims which they represent, and that such claims have been duly assigned to the present claimant, and that the drafts have never been indorsed by the payees, a prima facie right of recovery is established, though the drafts be still outstanding. Kinney v. U. S. (1884) 19 Ct. Cl. 671.

Semble a claim against the government may be duly assigned, though the treasury draft drawn therefor never reached the claimant and at the time of the assignment was in the hands of a third person. Id.

Where the claim has been allowed and a warrant issued therefor, the government is no longer concerned with the draft or the funds which it represented. National Bank of Commerce v. Downie (Wash. 1908) 161 F. 839, 88 C. C. A. 657, decree affirmed (1910) 218 U. S. 345, 31 S. Ct. 89, 54 L. Ed. 1065. A transferee acquires an equitable title to the draft and the funds represented to the extent of its claim. Farmers' Nat. Bank v. Robinson (1898) 59 Kan. 777, 53 P. 762, affirmed (1900) 20 S. Ct. 1027, 176 U. S. 681, 44 L. Ed. 637.

22. Payment to a trustee by agreement between parties.—There being a question as to the assignment of a contract with reference to the improvement of the harbor at Brunswick, Ga., under the river and harbor acts of 1894 (28 Stat. 342) and 1896 (27 Stat. 208), all parties may execute an agreement in the nature of a trust to embody a release to the United States as to a present payment and an agreement to release as to future payments, and providing for payment to a trustee for disbursement. (1898) 22 Op. Atty. Gen. 156.

23. Custom and usage as affecting assignments.—No proof of a custom can be received to show that claims against the United States, such as the so-called Montana militia vouchers, can be transferred by mere delivery. Creighton v. Black (1876) 2 Mont. 354.

24. Jurisdiction of courts to determine validity of assignments or transfers.—In an action by a material man, to whom a government contractor assigned the money coming to him from the government before any warrant therefor had issued, against another person, to whom the contractor also made an assignment, and to whom the money was actually paid, a defense by the latter that the assignment made to plaintiff was in violation of this section is not the assertion of a right or title under the statute, so as to give the supreme court jurisdiction to review a judgment against the defendant by the highest court of the state. Conde v. York (N. Y. 1898) 18 Sup. Ct. 234, 168 U. S. 642, 42 L. Ed. 611.

An appeal from the Court of Appeals of the District of Columbia reversing a decree enforcing a lien of attorneys on a fund or a claim against the United States

was allowed by the federal Supreme Court over the objection that the question raised concerning the construction of this section had been so foreclosed that the construction of the statute was not in question, in view of the difference between the two lower courts as to the effect of an interlocutory consent decree, and the effect of the statute on the rights of the parties to make the agreement irrespective of its operation on the United States and the application of the statute to the case presented. McGowan v. Parish (Dist. Col. 1913) 33 Sup. Ct. 521, 228 U. S. 312, 57 L. Ed. 849.

Complainant brought suit in a state court to subject a judgment, obtained by the defendant against the United States in the court of claims, to the payment of a judgment he had against defendant and for injunction to restrain defendant from collecting, transferring, or otherwise disposing of said claim against the government, and for the appointment of a receiver to collect and hold the fund. The suit was removed to the United States court, and, upon motion to remand, it held that the suit involved the construction of this section, and the motion was therefore denied. Willard v. Mueller (C. C. Ohio, 1885) 23 F. 209.

This provision does not affect the jurisdiction of the court of claims in cases under the Bowman Act (incorporated in part in section 254 of Title 28, Judicial Code and Judiciary). On the contrary, it constitutes a defense to a suit by the assignee. Forehand v. U. S. (1888) 23 Ct. Cl. 477.

An appeal to the United States Supreme Court from a decision of the Court of Appeals of the District of Columbia denying the validity of an attorney's contractual lien was allowed upon the ground that the construction of this section, a law of the United States, had been drawn into question by the defendants, over the objection that the question was foreclosed by a previous decision of that court. McGowan v. Parish (1913) 33 S. Ct. 521, allowing appeal from Parish v. McGowan (1912) 39 App. D. C. 184, reversed on other grounds (1915) 35 S. Ct. 543, 237 U. S. 285, 59 L. Ed. 955.

25. Effect of payments or delivery of warrants to assignees or attorneys in fact in disregard of act.—A claimant against the United States who executed a power of attorney defectively, and who, with knowledge of the facts, co-operated in the prosecution of an action brought in the name of the principal in the power, and who allowed a settlement of the claim to be made, was estopped from disputing the validity of the settlement, though powers of attorney are by statute void unless executed in the manner prescribed. Stowe v. U. S. (Ct. Cl. 1874) 19 Wall. 13, 22 L. Ed. 144.

Where a claim against the United States was allowed by the proper officers of the treasury, and a part thereof paid to the assignees of the claimant, on his receipt for the whole sum, the United States, when sued by them for the balance, cannot, on the ground that the assignment was not executed in the manner prescribed by law, set up as a counterclaim the amount so paid; but, by paying a part of the claim to the assignees, the United States did not waive its right to withhold from them the residue. McKnight v. U. S. (Ct. Cl. 1879) 98 U. S. 179, 25 L. Ed. 115.

Payment to an attorney in fact, constituted such by power of attorney executed by the claimants before the allowance of their claim by congress or by the proper department, was held good as between the government and such claimants, where the power of attorney had not been revoked at the time payment was made, notwithstanding the provisions of Act July 29, 1846, 9 Stat. 41, and Act Feb. 26, 1853, 10 Stat. 170 (incorporated in this section), prohibiting payment to attorneys, unless the warrant of attorney was executed after the allowance of the claim. Bailey v. U. S. (Ct. Cl. 1883) 3 Sup. Ct. 272, 109 U. S. 432, 27 L. Ed. 988.

If officers of the government choose to make payment to the person whom the claimant, by formal power of attorney, has accredited to them as authorized to receive payment, the claimant cannot be permitted to make his own disregard of the statute the basis for impeaching the settlement had with his agent. Bailey v. U. S. (Ct. Cl. 1883) 109 U. S. 432, 3 S. Ct. 272, 27 L. Ed. 988; Lopez v. U. S. (1889) 24 Ct. Cl. 84; Stowe v. U. S. (Ct. Cl. 1873) 19 Wall. 13, 22 L. Ed. 144.

Though the assignment of a claim against the government be void, yet, if the Treasury recognizes the assignment and pays the amount found due on an accounting to the assignee, an action will not lie to recover it back. McKnight v. U. S. (1877) 13 Ct. Cl. 292, affirmed (1878) 98 U. S. 179, 25 L. Ed. 115.

Where a payment is made by the officers of the treasury upon a power of attorney properly authenticated, actually given, and sufficiently comprehensive in terms, its validity or invalidity under the statute is no longer in question, and no party to the transaction is at liberty to deny the effectiveness of the payment. Bailey v. U. S. (1879) 15 Ct. Cl. 490, affirmed (1883) 3 S. Ct. 272, 109 U. S. 432, 27 L. Ed. 988.

Courts cannot enforce assignments or powers which the statute declares void. But if a government creditor voluntarily gives such an assignment or power, and the officers of the treasury treat it as valid and pay the debt to the person named therein, the parties would thereby take the instrument out of the operation

of the statute, and courts must then deal with it as if no such statute existed. Buffalo Bayou, B. & C. R. Co. v. U. S. (1880) 16 Ct. Cl. 238.

When the United States, relying upon the assignment of a claim, pay the money due on a claim to the assignee, the claimant is estopped from thereafter demanding any part of the money from the United States. But when the United States do not rely upon the assignment alone, but take an indemnifying bond from the assignee, the claimants may recover from the government. Ely v. U. S. (1883) 19 Ct. Cl. 658. To same effect, see Mechanics' Bank, etc., Co. v. Knoxville, etc., R. Co. (Tenn. 1923) 251 S. W. 906.

Assignments of claims and powers of attorney void under the statute may be recognized by the accounting officers and accounts be stated in favor of the assignees, and payments made thereon will be conclusive upon the assignors and discharge the indebtedness. Lopez v. U. S. (1889) 24 Ct. Cl. 84.

A power of attorney given by a builder to a bank to secure future advances for the erection of a public building, which authorizes the bank to "receive our last estimate from the United States on our contract for erection of U. S. custom house at Galveston," is void. The Secretary of the Treasury could give effect to such an instrument only by paying "the last estimate," which payment would be obligatory upon the contractor. Hitchcock v. U. S. (1892) 27 Ct. Cl. 185, affirmed (1896) 17 S. Ct. 142, 164 U. S. 227, 41 L. Ed. 412.

A claim was presented to the Southern Claims Commissioners, under Act March 3, 1871, c. 116 (R. S. § 3689, subd. 1, now repealed), the claimant describing himself in his application as "Alexander Anderson, of Augusta county, Virginia." The commissioners made favorable report thereon, finding the amount due claimant to be $175. Their report was adopted by Congress, and by act of March 3, 1873, c. 339, the Secretary of the Treasury was authorized to pay $175, "out of any moneys in the Treasury not otherwise appropriated," to "Alexander Anderson, of Virginia." In the meantime a claim had also been presented to the Commissioners in the name of Alexander Anderson, of Amelia county, Virginia, which was not allowed. The latter claimant, in March, 1873, gave F. a power of attorney to receive for him the $175 allowed by said act to "Alexander Anderson, of Virginia," describing himself as "Alexander Anderson, of Amelia Courthouse, of the county of Amelia, in the state of Virginia." The money was paid to F. on filing said power, who had acted in good faith, and was not informed of the mistake until after he turned over the money to his principal. It was held, that F. was under no legal liability for the money, but his principal was liable, either at the suit of the rightful claimant or of the United States. (1878) 16 Op. Atty. Gen. 193.

Where a contractor with the Quartermaster's Department failed to perform certain work, and an arrangement was effected whereby his bondsmen should take charge of and complete the work, the contractor executing and delivering to them a power of attorney, by which they were authorized to receive and receipt for the money due on the contract, the Attorney General ruled that the Department might recognize this power of attorney, and that payment to said bondsmen upon their receipted vouchers thereunder would discharge the government. (1889) 19 Op. Atty. Gen. 239.

The moneys due by the United States to a contractor may be paid to him through his attorney in fact, constituted for that purpose, notwithstanding it is claimed that one of the sureties entered into a subcontract with the contractor by which he was to receive all moneys to be paid on the contract, such subcontractor not having filed any notice of such agreement or made any claim to payment. (1889) 19 Op. Atty. Gen. 239; (1893) 20 Op. Atty. Gen. 643.

The practice of the Treasury Department of delivering warrants to attorneys who have prosecuted claims before the Department, except under the safeguards of this section, is not warranted by law. (1904) 25 Op. Atty. Gen. 279.

The Secretary of the Treasury may recall his action in delivering a warrant to an attorney not entitled under the law to receive it, and may take necessary measures, by issuing a new warrant or otherwise, to pay the money involved to the party for whom it was appropriated by Congress. Id.

In so recalling a warrant and issuing a new one, the government does not become liable to the attorney for the amount of his fee for recovering the claim. Id.

This section is for the protection of the government, and under it the government has no concern in the disposition of a warrant after placing it in the hands of one authorized to receive it by the claimant. Farmers' Nat. Bank v. Robinson (1898) 53 P. 762, 59 Kan. 777, affirmed (1900) 20 S. Ct. 1027, 176 U. S. 681, 44 L. Ed. 637.

26. Claims within purview of statute—In general.—Every claim against the United States however raised, of whatever nature it may be, and wherever and whenever presented, is embraced in this statute. U. S. v. Gillis (Ct. Cl. 1877) 95 U. S. 407, 413, 24 L. Ed. 503.

A voluntary assignment of naked claims against the government for the purpose of suit or in view of litigation or other-

wise cannot be countenanced, and this statute embraces every claim or right to demand money from the United States, however arising, of whatsoever nature, and whenever and wherever prosecuted. Emmons v. U. S. (C. C. Or. 1911) 189 F. 414.

The United States Shipping Board Emergency Fleet Corporation is an entity different and separate from the United States, and an assignment of claims against such corporation is not void under this section. Providence Engineering Corporation v. Downey Shipbuilding Corporation (D. C. N. Y. 1925) 3 F.(2d) 154. To the same effect, see Charles Nelson Co. v. U. S. (D. C. Wash. 1926) 11 F. (2d) 906.

The term "claim" was held not to include claims for supplies furnished the Oregon expedition to protect the emigrants of 1854. Dowell v. Cardwell (D. C. Or. 1877) Fed. Cas. No. 4,039.

A warrant of attorney to collect and receive a claim may be made at any time after provision has been made by Act of Congress for its payment. Id.

A claim upon the United States is something in the nature of a demand not yet provided for or acknowledged by law; it is something asked for or demanded on the one hand and not admitted or allowed on the other. When the demand is admitted, authorized, or provided for by law, it is not a mere claim, but a debt. Id.

An assignment or transfer of a claim arising under the "captured and abandoned property act," 12 Stat. 820 (section 268 of Title 28, Judicial Code and Judiciary), executed before a judgment is recovered, is void under this section. Martin v. U. S. (1867) 3 Ct. Cl. 64.

A sale of all claims due a vessel and her owners is, as an assignment of a claim on the government for the destruction of the vessel while in its service void. Ely v. U. S. (1865) 19 Ct. Cl. 658.

The Alabama claims became by operation of Act June 5, 1882 (22 Stat. 98), claims against the United States, and subject to the provisions regulating transfers and assignments. George Howes & Co. v. U. S. (1889) 24 Ct. Cl. 170. See Williamson v. Colcord (D. C. Me. 1875) Fed. Cas. No. 17,752.

Internal revenue stamps, bought by the claimant, were part of the contents of its tobacco factory, and were totally destroyed by fire. The value of the stamps was a part of the sum paid by the insurance companies on the loss sustained. The court held that the claimant could recover, to the use of the insurance companies, from the United States the value of the stamps. American Tobacco Co. v. U. S. (1897) 32 Ct. Cl. 207, affirmed (1897) 166 U. S. 468, 17 S. Ct. 619, 41 L. Ed. 1081.

Sundry parties having conflicting claims against the government under a statute making provision to defray the expenses of removing the Choctaw Indians from the state of Mississippi, an arrangement between them was made to refer the matter to the arbitration of J. M. C. and P. R. F., with power of attorney to receive the money on their behalf and receipt for the same to the United States. It was held, that this was not a case of the transfer or assignment of a claim, or of agency thereof, forbidden by this act. (1853) 6 Op. Atty. Gen. 60.

"The settled construction of this act has excluded from its operation liabilities created by an express stipulation of the government to pay a specific sum of money, or where an ascertained sum is confessedly due." (1868) 12 Op. Atty. Gen. 407.

An order may be made by the Secretary of the Interior directing payment of the certificates given by the superintendent of the Census in cases where such certificates are assigned in strict conformity to this section. (1882) 17 Op. Atty. Gen. 266.

The provisions of this section do not apply to undisputed claims, or any claim about which no question is made as to its validity or extent. (1883) 17 Op. Atty. Gen. 545.

Where a contract was made for roofing a courthouse at a fixed price, and a power of attorney given to receive a part of such price as security for material purchased by the contractor, it was ruled that the power was not affected by this section; as no doubt existed concerning the right of the contractor to receive the amount so secured. Id.

An assignment of an indebtedness admittedly due by the United States is not prohibited by this section. (1894) 21 Op. Atty. Gen. 75, approving (1881) 17 Op. Atty. Gen. 545.

This section applies only to such claims as require allowance by some accounting officer, an ascertainment of the amounts due thereon, and the issuance of a warrant for their payment. (1899) 22 Op. Atty. Gen. 637.

Checks of disbursing officers of the government drawn upon the public treasury or an assistant treasurer of the United States may be properly indorsed and transferred by either the payee, indorsee, or by an agent of either, acting as such under a power of attorney from such payee or indorsee. Id.

An assignment of a claim against the United States for work unperformed, with power to certain trustees to prosecute the unfinished work, and to collect moneys that may thereafter become due, confers no rights on the assignee, as against the United States, in view of this section. American Surety Co. v. U. S. (1898) 24 South. 388, 76 Miss. 289.

This section does not bar claims against the United States Government which arise

under involuntary assignments of patents by a duly appointed receiver. (1920) 32 Op. Atty. Gen. 135.

Assignment, as security by contractor with the United States, of its interest in a special fund created by contract by it with others, and consisting of money borrowed to carry on contract with the United States and money received from the United States on account of the government contract, was held not a transfer or assignment of a contract with or claim on the United States, in violation of this section and section 15 of Title 41, Public Contracts. Irwin's Bank v. Fletcher Savings & Trust Co. (Ind. 1924) 145 N. E. 869, opinion modified on rehearing (1925) 146 N. E. 909.

Assignment of contract to deliver acetone to United States government was not within prohibition of this section. Explosive Chemical Co. v. William S. Gray & Co. (N. Y. Mun. Ct. 1925) 207 N. Y. S. 638, 124 Misc. Rep. 333, reversed on other grounds (1925) 212 N. Y. S. 324, 125 Misc. Rep. 918.

A contract whereby one, for contingent compensation, agreed to obtain passage of acts of Congress making appropriations to contractors who had lost money in government work was not void under this section; the contractors not having claims against the United States, and the one employed to obtain the appropriation having no right or interest directly or indirectly in the claim, and the government no longer being interested in the matter after having paid out the money. Stansell v. Roach (1923) 246 S. W. 520, 147 Tenn. 183, 29 A. L. R. 143.

An assignment by a railroad to one of its creditors of a claim against the United States for use of its road, is invalid under this section. Mechanics' Bank, etc., Co. v. Knoxville, etc., R. Co. (1923) 251 S. W. 906, 148 Tenn. 113.

Where the fund awarded to the United States against a foreign state for the payment of certain claims is held in the treasury for distribution, and the claims thereto are to be established by legal proceedings, though the United States assumes no liability beyond their payment of the fund, such claims are against the United States, within the meaning of this section. Manning v. Leighton (1891) 65 Vt. 84, 26 A. 258, 24 L. R. A. 684, motion to bring forward and rehear dismissed (1893) 28 A. 630, 66 Vt. 56.

27. —— **Claims pending before courts or commissions.**—A commission called together, in pursuance of treaty stipulations or otherwise, to settle and adjust disputed claims, with a view to their ultimate payment and satisfaction, is, for that purpose, a quasi court; and there is nothing illegal, immoral, or against public policy in an agreement by an attorney at law to present and prosecute a claim before it, either at a fixed compensation, or for a reasonable percentage upon the amount recovered, and such agreement is not within this section, as it does not constitute a lien on funds. Wright v. Tebbitts (Dist. Col. 1876) 91 U. S. 252, 253, 23 L. Ed. 320.

This section applied to suits in the court of claims established by Act 1855, incorporated into section 241 of Title 28, Judicial Code and Judiciary. Emmons v. U. S. (C. C. Or. 1891) 48 F. 43.

It is inferable from the decisions of the Supreme Court in the Floyd Acceptance Cases, 7 Ct. Cl. 75, and in Anderson Case, 7 Ct. Cl. 121, and from Act June 25, 1868, 15 Stat. 75, § 4 (incorporated in part in R. S. § 1079, now repealed) that an assignment of claims or choses in action against the government is not void under the act to prevent frauds upon the Treasury of Feb. 26, 1853, 10 Stat. 170 (incorporated in this section). The purpose of the act must be restricted to matters before the Treasury, and not to matters coming within the jurisdiction of the courts. The former decisions of the court holding assignments void must be overruled. See the Floyd Acceptance Cases (1865) 1 Ct. Cl. 270, affirmed (1869) 7 Wall. 666, 19 L. Ed. 169; Cote Case (1867) 3 Ct. Cl. 64; Lawrence v. U. S. (1872) 8 Ct. Cl. 252.

At the common law a chose in action was from its nature deemed unassignable, and the same principle formerly covered claims against the United States, but the acts establishing and reorganizing the Court of Claims provide for the litigation of assigned claims. They may be litigated, and do not come within the prohibition of this section. Cavender v. U. S. (1872) 8 Ct. Cl. 281.

28. —— **Judgments or decrees of court.**—The transfer or assignment of a decree rendered against the United States after Act Feb. 26, 1853, 10 Stat. 170 (this section) regulating the transfers of claims against the United States, is subject to the provisions of that statute, and a transfer made before the "issuing of a warrant for the payment thereof is void." Adams v. U. S. (1867) 3 Ct. Cl. 312.

A debt settled by judgment in the Court of Claims, and due from the United States, does not come within the purview and operation of this section. (1867) 12 Op. Atty. Gen. 216.

29. —— **Claims not payable by warrant.**—The only cases where assignments of any claim on the United States or any part thereof are recognized is where a warrant has already been issued, and, where there are any cases where the claim cannot be paid by a warrant, they do not come within the exception, but are affected by the general language. Hager v. Swayne (Cal. 1893) 13 Sup. Ct. 841, 149 U. S. 242, 37 L. Ed. 719.

The provision in this section making void "all powers of attorney, orders, or other authorities for receiving payment" of

any claim upon the United States, or any part or share thereof, is not limited to powers of attorney, etc., relating to claims which are to be paid by Treasury warrant, but extends to those which relate to claims otherwise payable. (1879) 16 Op. Atty. Gen. 261.

30. —— Claims against officers and employés in general.—The claims of deputy marshals for compensation are claims against the marshal personally, and not against the United States, and hence not within this section, prohibiting the assignment of the latter class of claims. Douglas v. Wallace (N. C. 1896) 16 Sup. Ct. 485, 161 U. S. 346, 40 L. Ed. 727, affirming Wallace v. Douglas (1889) 103 N. C. 19, 9 S. E. 453, and (1895) 116 N. C. 659, 21 S. E. 387.

Judgments against collectors for an excess of duties collected are not "claims upon the United States," within this section. Burke v. Davis (C. C. Ill. 1894) 63 F. 456.

This section is inapplicable to action brought by social club against collector of internal revenue to recover tax paid it by member, with directions to take measures for its recovery after payment. Masonic Country Club of Western Michigan v. Holden (D. C. Mich. 1926) 12 F.(2d) 951.

Assignment of interest in property previously seized by Alien Property Custodian, if established, was held assignment of claim against the government, void under this section. Sturchler v. Hicks (D. C. N. Y. 1926) 17 F.(2d) 321.

31. —— Claims against Director General of Railroads.—This section has no application to claims against the United States Railroad Administration for rebate for overcharges, because of the provisions of the Federal Control Act, March 21, 1918, section 10 (temporary), authorizing suits to be brought against the carriers, and providing that no defense shall be made thereto upon the ground that the carrier is an instrumentality of the federal government. Parrington v. Davis (D. C. Or. 1923) 285 F. 741.

Assignment of corporation's claim against Director General of Railroads on reparation award to another corporation, into which assignor merged, was not violative of this section, in view of Federal Control Act, § 10 (temporary), notwithstanding action was brought under Transportation Act, § 206 (section 74 of Title 49, Transportation), after termination of federal control, since Federal Control Act and Transportation Act must be construed together. Empire Refining Co. v. Davis (D. C. Okl. 1925) 6 F.(2d) 305.

Claims against the Director General of Railroads arising out of his operations of the railroad system are not within this section. Weiss v. Davis (1924) 250 Mass. 12, 144 N. E. 765, reversed on other grounds (1926) 46 S. Ct. 378, 270 U. S. 565, 70 L. Ed. 736. The court said: "While the words of said section 3477 [this section] are broad and are construed so as to effectuate the purpose of its framers, it is manifest from the decisions that numerous exceptions exist to their apparently unrestricted sweep, arising from the inherent reasonableness which must be attributed, so far as possible, to every act of the legislative department of government.

"The pertinent provisions of the Federal Control Act approved March 21, 1918, c. 25, 40 U. S. Sts. at Large, 451 [temporary] are section 10 to the effect that 'carriers while under federal control shall be subject to all laws and liabilities as common carriers, whether arising under state or federal laws or at common law, except in so for as may be inconsistent with the provisions of this act or any other act applicable to such federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the federal government'—and section 12 to the effect that 'moneys and other property derived from the operation of the carriers during federal control are hereby declared to be the property of the United States. Unless otherwise directed by the President, such moneys shall not be covered into the treasury, but such moneys and property shall remain in the custody of the same officers, and the accounting thereof shall be in the same manner and form as before federal control. Disbursements therefrom shall without further appropriation be made in the same manner as before federal control.' We are of opinion that these provisions of the federal Control Act disclose an intent that the business of the railroads and the litigation arising therefrom should go on under federal administration the same as before except as modified by express provision of the act and of proclamations pursuant thereto or by necessary implication. The maintenance of an action in his own name by the assignee of a non-negotiable legal chose in action has been permissible under our laws for more than a quarter of a century. G. L. c. 231, § 5. It is likely that similar statutes have been enacted in other states. The defense here put forward does not seem to depend upon any declared or reasonably necessary policy in the operation of the railroads for the protection of the United States. The formalities established with respect to disbursements of money from the treasury of the United States are specifically made inapplicable by the statute of the operation of the railroads by the Director General. The receipt of the income and the payment of the expenses of

railroad operation under federal control were to be and remain as before. The provision that actions at law might be brought against carriers under federal control 'as now provided by law' appears to authorize actions by assignees of nonnegotiable legal choses in action, since such actions were authorized at the time of the enactment of the Federal Control Act. The defense here urged depends upon the ground that the carrier was an instrumentality or agency of the federal government. Such defense is forbidden by the express words of section 10 of the act. While the question is not free from difficulty, we are of opinion that said section 3477 is not applicable as a bar to the present action. This conclusion seems to us to be supported by the reasoning of the opinion in Missouri Pacific Railroad v. Ault (Ark. 1921) 256 U. S. 554, 41 S. Ct. 593, 65 L. Ed. 1087. It is in accordance with express decisions in Morgan v. Hines (1922) 65 Mont. 300, 211 P. 778; Paradise Land & Live Stock Co. v. Davis (1922) 60 Utah, 189, 207 P. 145, and Parrington v. Davis (D. C. Or. 1923) 285 F. 741. There appears to be nothing contrary to this result in Mechanics' Bank & Trust Co. v. Knoxville, S. & E. Railway Co. (1923) 148 Tenn. 113, 251 S. W. 906. It follows that the plaintiff's request that the provisions of said section 3477 are not a bar to this action was given rightly by the trial judge."

In view of Federal Control Act §§ 10 and 12 (temporary) and § 206 (section 74 of Title 49, Transportation) and section 210 (temporary), assignments of claims for injuries to cattle shipped during federal control were not within this section. Morgan v. Hines (Mont. 1922) 211 P. 778.

An assignment of a claim for damages arising out of an injury to sheep while they were being shipped on a railroad under federal control was not within this section, since under section 12 of the Federal Control Act (temporary), such a claim was payable out of the general receipts of the railroad. Paradise Land & Live Stock Co. v. Davis (Utah, 1922) 207 P. 145.

32. —— Claims for customs duties illegally exacted.—An assignment of an unliquidated claim for customs duties alleged to have been illegally exacted is void under this section. The John Shillito Co. v. McClung (Ohio, 1892) 51 F. 868, 2 C. C. A. 526, affirming judgment (C. C. 1891) 45 F. 778.

Judgments against collectors for an excess of duties collected are not "claims upon the United States," within the meaning of this section; but, even if such judgments are claims upon the United States, the statute does not affect assignments to the real owner of the judgments, made by an agent in whose name they were rendered, by order of a court, since such statute applies only to voluntary assignments. Burke v. Davis (C. C. Ill. 1894) 63 F. 456.

33. —— Claims for sugar bounties.—There was nothing in the sugar bounty provision of the act of October 1, 1890 (superseded) or in this section or section 15 of Title 41, Public Contracts, to prevent a sugar planter from pledging the bounty to become payable on his crop, before his claims therefor had been presented and allowed, and a treasury warrant issued. Barrow v. Milliken (La. 1896) 74 F. 612, 20 C. C. A. 559, applying Hobbs v. McLean (Iowa, 1886) 6 Sup. Ct. 870, 117 U. S. 567, 29 L. Ed. 940, and writ of certiorari denied (1897) 17 Sup. Ct. 991, 167 U. S. 746, 42 L. Ed. 1210. See Burdon Cent. Sugar Refining Co. v. Payne (La. 1897) 167 U. S. 127, 17 S. Ct. 754, 42 L. Ed. 105.

The prohibition in this section against assigning claims applies only to claims existing at the time of the transfer, and not to such as are merely possibilities, as where, before raising sugar, a planter assigned the bounty to be paid upon such sugar as might be raised, under Act Oct. 1, 1890 (superseded). Milliken v. Barrow (C. C. La. 1895) 65 F. 888, affirmed (C. C. A. 1896) 74 F. 612, certiorari denied (1897) 17 S. Ct. 991, 167 U. S. 746, 42 L. Ed. 1210.

A claim for a sugar bounty is a claim for reward and compensation and ripens into a vested interest by compliance with the statute and the actual production of sugar thereunder. Such a claim is property that passes into the fund upon an assignment for the benefit of creditors. Calder v. Henderson (La. 1893) 54 F. 802, 4 C. C. A. 584.

34. —— Moneys due on contracts.—Under this section and section 15 of Title 41, Public Contracts, an assignment by a public contractor of a claim against the United States for money accruing on a building contract was void, both as against the United States, the contractor's surety, the laborers, and materialmen. Henningsen v. U. S. Fidelity & Guaranty Co. (Wash. 1906) 143 F. 810, 74 C. C. A. 484, decree affirmed (1908) 28 Sup. Ct. 389, 208 U. S. 404, 52 L. Ed. 547.

35. —— Claims for unlicensed use of patented invention.—In view of this section, assignee of letters patent has no claim under section 68 of Title 35, Patents, for any unlicensed use of the patented invention by the United States prior to such assignment. Brothers v. United States (Ct. Cl. 1919) 39 S. Ct. 426, 250 U. S. 88, 63 L. Ed. 859, affirming judgment (1917) 52 Ct. Cl. 462.

The assignee of letters patent assigned them to the plaintiff, attempting thereby to invest plaintiff with the right to recover for past infringements. It was held that such a right was not assignable as against the United States, 36 Stat. 851.

Richmond Screw Anchor Co., Inc., v. U. S. (1925) 61 Ct. Cl. 397.

36. —— **Drawbacks on re-exported goods.**—This section affects only perfected claims, and does not apply to a claim for drawbacks on re-exported goods, made in the name of one to whom the outward bill of lading is indorsed with authority to act for custom house purposes, since the regulations of the treasury department provide that the person producing the bill of lading so indorsed shall be deemed the exporter for the purpose of making entry, and receiving the drawback or refund. Kennedy v. U. S. (N. Y. 1899) 95 F. 127, 37 C. C. A. 25, affirming judgment (C. C. 1897) 79 F. 893. See, also (1890) 19 Op. Atty. Gen. 638.

37. —— **Claims against Chinese indemnity fund.**—The statute does not apply to a claim against the Chinese indemnity fund under control of the Department of State. Hubbell v. U. S. (1879) 15 Ct. Cl. 546, affirmed by operation of law (1880) 16 Ct. Cl. 635.

38. —— **Claims of Indian nation.**—An assignment by an Indian nation of a part interest in a claim held by it against the United States in accordance with section 81 of Title 25, Indians, and a subassignment made in accordance with section 84 of Title 25 are not prohibited or rendered invalid by this section. Dexter v. Meigs (1890) 47 N. J. Eq. (2 Dick.) 488, 21 A. 114.

39. —— **Claims for rent.**—Where a demand for rent due from the United States is assigned as security before the claim has been allowed, the assignee may assert his rights against persons named in warrants subsequently issued by the treasury therefor, and against a mortgagee of the premises not entitled to the rents, notwithstanding this section, as the object of the section is merely to prevent frauds on the treasury. Freedman's Sav. & Trust Co. v. Shepherd (Dist. Col. 1888) 8 Sup. Ct. 1250, 1256, 127 U. S. 494, 32 L. Ed. 163.

40. —— **Entryman's claim for repayment on cancellation of entry.**—Under this section the assignee of one whose entry on timber lands is canceled by the commissioner of the general land office after he has made all the necessary payments cannot sue to recover the money so paid. Emmons v. U. S. (C. C. Or. 1890) 42 F. 26.

An assignment of a claim against the United States for money paid to the Land Office by plaintiff's assignors as the purchase price and fees, pursuant to a timber land entry which was erroneously rejected, was invalid and insufficient to sustain an action against the government by the assignee in a federal court. Emmons v. U. S. (C. C. Or. 1911) 189 F. 414.

The purchase at a judicial sale of the interest of one who makes an entry of public land does not give to the purchaser a right to the repayment of purchase money paid on the land by the enterer, upon the entry being canceled by the government. Hoffeld v. U. S. (1901) 36 Ct. Cl. 26, affirmed (1902) 22 S. Ct. 927, 186 U. S. 273, 46 L. Ed. 1160.

An entryman's claim for repayment on the cancellation of his entry is not assignable. Commonwealth Title Ins. & Trust Co. v. U. S. (1902) 37 Ct. Cl. 532, affirmed (1904) 24 S. Ct. 546, 193 U. S. 651, 48 L. Ed. 830.

41. —— **Money taken from prisoner accused of crime.**—Money taken from one arrested for larceny from a post office was retained by the inspector under the erroneous supposition that it was the money stolen. It was held, that an order by the prisoner to the inspector to pay it to a third person was not an assignment under this section. U. S. v. Ferguson (N. Y. 1897) 78 F. 103, 24 C. C. A. 1, affirming judgment Ferguson v. U. S. (D. C. 1894) 64 F. 88.

42. —— **Witness and jury fees.**—The claim of a witness for the United States for fees earned by attendance on a federal court as fixed by section 601 of Title 28, Judicial Code and Judiciary, is a claim against the marshal, and not against the government, and therefore not within the prohibition of this section, and an action will lie by the assignee of witness' certificates on the bond of a marshal who has received the money to pay them in his official capacity, but has failed to do so. Bollin v. Blythe (C. C. S. C. 1891) 46 F. 181.

Marshals, when paying witnesses and jurors, must be governed by the general laws applicable to powers of attorney and assignments of claims. Lopez v. U. S. (1889) 24 Ct. Cl. 84.

A witness, or the assignee of his claim, may be paid either directly from the Treasury or through a marshal. Id.

43. —— **Pay accounts of army officers.**—This section does not forbid the transfer or assignment of their pay accounts by army officers after the same become due. Such accounts may be lawfully transferred or assigned when due, the regulations of the Army relating to this subject (par. 1349, art. XLV, Regulations of 1863) being complied with. (1877) 15 Op. Atty. Gen. 271.

44. —— **Vouchers.**—In consideration of a deed of certain land, defendant assigned to complainant what purported to be a voucher of a claim against the United States. The conditions prescribed by this section had not been complied with. The voucher transferred to complainant was not the one issued to the original claimants, but had been surreptitiously taken from the files of the congressional com-

mittee on claims, which defendant probably knew, as also the fact that the claim it represented had been disallowed by the federal supreme court. It was held, that the transfer to complainant did not give him even an equitable right to the payment of the voucher by special act of congress or otherwise, and that the deed was without consideration. Austin v. Felton (C. C. Ill. 1890) 41 F. 161.

The sale of a quartermaster's voucher by a contractor to a third person works a transfer of his claim against the government, or of so much of it as may be represented by the voucher. But such vouchers are not in any sense negotiable paper, and the purchaser will take them subject to all the equities that may exist against the contractor. Nevertheless they are evidences of indebtedness sufficient in themselves to support prima facie an action. Lawrence v. U. S. (1872) 8 Ct. Cl. 252.

The assignment of a voucher is void. Harris v. U. S. (1892) 27 Ct. Cl. 177.

An approved account or voucher for transportation performed for the Navy Department by F. & C., contractors, was issued by the chief of the Bureau of Steam Engineering in favor of and delivered to H. & Son, who were brokers for F. & C. The latter claimed that the amount appropriated by Act June 14, 1878, c. 191, to pay for the transportation, should be paid to them, and not to H. & Son. It was held, that the account or voucher issued as aforesaid was not a negotiable paper; that a transfer or assignment thereof would be void under this section; that the appropriation was made for the purpose of paying F. & C., and not any alleged claim of H. & Son; and that the Navy Department might treat such approved account or voucher as a nullity, and issue an approved account in favor of F. & C. and transmit it to them directly. (1878) 16 Op. Atty. Gen. 191.

Persons who receive the so-called Montana militia vouchers without the formalities which this section prescribes acquire no title. Creighten v. Black (1876) 2 Mont. 354.

45. —— Claims for goods sold Indians.—Claims for goods sold to the Sisseton and Wahpeton bands of the Sioux tribe of Indians, allowed by the head men of such bands, under treaty stipulations of the United States for the payment of such claims, were direct claims against the United States, under this section, and an assignment thereof prior to December 8, 1860, and prior to allowance was void. Becker v. Sweetzer (1870) 15 Minn. 427 (Gil. 346).

46. —— Indian annuities.—It is doubtful whether Indian annuities granted by the government ought to be regarded as legally assignable unless made so by law. (1851) 5 Op. Atty. Gen. 285.

47. Right of assignor to repudiate assignment.—Powers of attorney to collect claims upon the United States, and voluntary assignments of such claims, are revocable at will, prior to the payment of the claims by the government. Milliken v. Barrow (C. C. La. 1895) 65 Fed. 888, affirmed (1896) 74 F. 612, 20 C. C. A. 559, certiorari denied (1897) 17 S. Ct. 991, 167 U. S. 746, 42 L. Ed. 1210.

Where an assignment of a claim against the government is void under this section, the assignor may repudiate the assignment at any time before actual payment, and bring an action in his own name. Belt's Executrix v. U. S. (1879) 15 Ct. Cl. 92.

S., having a contract with the Engineer Department for dredging in the Occoquan river, by the terms of which the compensation named therein was to be paid to him from time to time, gave to I. a power of attorney (declared in the instrument to be irrevocable), "to demand, receive, and receipt for, to the proper disbursing officer of the United States, all moneys, warrants, drafts, vouchers, and checks that may became due and payable to me (S.) from the United States for work," etc. Subsequently S. notified the engineer officer in charge that he revoked the power of attorney. It was held, that by force of this section said power of attorney was without legal effect with respect to the claim of the contractor against the United States for his compensation; that he might at any time revoke it, and when revoked it is not for the officers of the United States to consider whether the revocation was rightful or wrongful. (1879) 16 Op. Atty. Gen. 261.

A power of attorney given to collect a claim against the government, with an agreement that the donee of the power shall receive "a sum equal to 50 per cent. of the amount allowed" on the claim is not a power coupled with an interest, and is revocable, and, such power having been given to a firm, one of the members of which has since died, whereby the firm became dissolved, such power cannot be executed by the surviving members, and power should not be recognized. (1890) 19 Op. Atty. Gen. 483.

48. Rights of assignee under invalid assignment against persons receiving fund.—This section is intended only to protect the government, and does not affect the rights of an assignee of a fund due and to become due a government contractor, as against one who subsequently receives such fund with notice of the prior assignment. York v. Conde (1892) 60 Hun, 316, 20 N. Y. S. 961.

This section is intended merely for the protection of the government, and a bona fide assignment without such formalities is good so far as to enable the assignee, after the government has paid over the

money to the claimant, to enforce, as against him or those who take with notice, the interest given by the assignment. York v. Conde (1895) 147 N. Y. 486, 42 N. E. 193, affirming (1893) 71 Hun. 614, 24 N. Y. S. 1149. See, also, Fewell v. American Surety Co. (1900) 80 Miss. 782, 28 So. 755, 92 Am. St. Rep. 625.

Where plaintiff has loaned defendant money, and defendant has executed an assignment to plaintiff of all his right, title, and interest in a contract with the United States government, although not in the statutory manner, but the government has refused to recognize the assignment, and has paid the money to defendant, plaintiff cannot maintain conversion against defendant, in view of this section. Brindze v. Kuckro (Sup. 1919) 179 N. Y. S. 69.

Assignments specifically describing a claim against the United States may pass it, or portions of it, to those who pay a value for it, and the first in order of time is first in right. Appeal of Mann (1852) 18 Pa. (6 Harris) 249.

49. Right of assignee to sue in court of claims.—An assignee of a claim cannot prosecute such claim in the court of claims. Sines v. U. S. (1863) 1 Ct. Cl. 12.

The assignee or holder of a nonassignable claim transferred by bill of exchange cannot maintain suit thereon in his own name. Jackson v. U. S. (1865) 1 Ct. Cl. 260.

An action under the abandoned or captured property act (incorporated in part in section 268 of Title 28, Judicial Code and Judiciary) could not be maintained by the assignee in the name of the assignor unless his authority from the assignor was clearly shown. Silverhill v. U. S. (1869) 5 Ct. Cl. 610; Crowell v. U. S. (1870) 6 Ct. Cl. 23.

The verification of the petition by the executrix of a deceased assignor sufficiently connects him with the case. Pullen v. U. S. (1871) 7 Ct. Cl. 507.

One who is in legal effect merely the assignee of a claim against the Government cannot maintain an action upon it, though he holds an official voucher for it issued to him in his own name. Johnston v. U. S. (1877) 13 Ct. Cl. 217.

Section one of the Act of March 3, 1887, c. 359, 24 Stat. 505 (section 250 of Title 28, Judicial Code and Judiciary) giving the right to sue the United States in respect to any claim on which it is liable either in a court of law, equity, or admiralty, as if it were "suable" generally, includes the assignee of such claim. The right of an assignee to sue has not been passed upon by the Supreme Court since the passage of the Act of 1887. Emmons v. U. S. (C. C. Or. 1891) 48 F. 43, where it was said that U. S. v. Jones (Or. 1889) 131 U. S. 1, 9 S. Ct. 669, 33 L. Ed. 90, was a suit under the Act of 1887 by an assignee. The objection was not made in that case, and it appears to have been taken for granted that the assignee could maintain the suit if the assignor could.

One who purchases a claim against the government from an assignee in bankruptcy may maintain an action thereon in his own name. McKay v. U. S. (1892) 27 Ct. Cl. 422.

50. Equitable rights of assignee.—Under the decision in Gillis' Case (Ct. Cl. 1877) 95 U. S. 407, 24 L. Ed. 503, the court of claims will not enforce equitable rights of an assignee of a claim against the United States under an assignment which is made in violation of the provisions of the statute. Burke v. U. S. (1877) 13 Ct. Cl. 231.

The plaintiff brought an action of assumpsit in the state court, the declaration in which contained two counts (1) for money had and received, and (2) for work and labor performed. To sustain the issue raised under the second count, the plaintiff introduced evidence tending to prove that, during a period of more than two years, he bestowed much care, work, labor, and diligence in the prosecution of the claim against the United States to a successful termination, under a contract with the defendant that he might have what he could recover on the claim, considered worthless, held by the defendant against the United States. The submission of the cause to the jury upon the second count, and the charge of the trial court, broad enough to warrant a verdict upon that count alone, irrespective of any claim arising under the first count, make it apparent that the judgment sought to be reviewed was not based on any question arising under this section. Delaware City, etc., Steamboat Nav. Co. v. Reybold (Del. 1892) 142 U. S. 636, 12 S. Ct. 290, 35 L. Ed. 1141.

51. Effect as betewen parties to assignment.—The illegality, under this section of a clause in a contract for the prosecution of a claim against the United States, making the payment of compensation for the services rendered thereunder a lien upon the claim and upon any draft, money, or evidence of indebtedness that may be issued thereon, does not invalidate so much of the contract as provides for the payment for such services of a sum squal to one-third of the amount allowed on the claim. Nutt v. Knut (Miss. 1906) 26 Sup. Ct. 216, 219, 200 U. S. 13, 50 L. Ed. 348.

A contract pledging a claim against the United States in payment of a subsisting debt, though void as a contract, under this section is admissible as evidence of an acknowledgement of the debt sufficient to take it out of the statute of limitations. Thompson v. Shepherd (D. C. 1882) 1 Mackey, 385.

An agreement containing an assignment

by a claimant to an attorney of an interest in a claim against the government for services to be performed by the attorney in the prosecution of the claim, being void under this section, the attorney, in an action to recover his fees, cannot successfully declare on an oral agreement in precisely the same terms as the written agreement, but antedating the latter by two days, and secure the admission in evidence of the written agreement as an admission by the claimant of his employment of the plaintiff at a specified amount of compensation, in support of the declaration; any antecedent oral agreement being merged in the subsequent written contract. Owens v. Wilkinson (1902) 20 App. D. C. 51.

The provision in a contract with an attorney, whereby he is to receive a percentage of the amount recovered upon a claim, will stand, although a further provision giving him a lien therefor is void under this section. Parish v. McGowan (1912) 39 App. D. C. 184, reversed on other grounds (1915) 35 S. Ct. 543, 237 U. S. 285, 59 L. Ed. 955.

The provisions of this section are for the benefit of the United States only, and hence, where the government had recognized the assignees' rights by passing a special act making the judgment recovered by them the foundation of an appropriation, such assignment was valid as between the parties, though it did not comply with the statutory formalities. Thayer v. Pressey (1900) 56 N. E. 5, 175 Mass. 225.

In Lay v. Lay (Miss. 1918) 248 U. S. 24, 39 S. Ct. 13, 63 L. Ed. 103, affirming (1918) 118 Miss. 549, 79 So. 291, the court stated the proposition involved and its conclusion as follows: "The right to a fund resulting from the payment of an appropriation by Congress to satisfy a judgment for the value of property taken during the Civil War is the issue here involved. The contestants are the heirs at law of the original claimant and persons holding under an assignment by her of all her right to the claim or fund. The court enforced the assignment. Under the assumption that the claimant was prohibited by the law of the United States (§ 3477, Rev. Stat. [this section]) from making an assignment, the heirs at law prosecute error to correct the federal error thus assumed to have been committed. But the assumption indulged in as to the effect of the law of the United States is without merit. McGowan v. Parish (Dist. Col. 1915) 237 U. S. 285, 294, and cases cited. This renders it unnecessary to consider whether, if the heirs at law were entitled to the fund they would be liable to pay the full sum of the attorney's fee contracted for by the transferee and the duty to pay which the transferee and those in privity do not dispute."

Under this section all assignments of claims on the United States are void in law and equity, and cannot be enforced between the parties. Wood's Ex'rs v. Dialogue (Pa. 1881) 38 Leg. Int. 260.

This section was enacted to protect the government, and not the parties to the assignment, so that an assignment of shipbuilding contracts with the federal government, with power to collect the payments to become due thereunder, being valid between the parties, was not made invalid by the statute, where the government voluntarily deposited the money in court to be disposed of by the parties upon completion of contracts. S. H. Hawes & Co. v. Wm. R. Trigg Co. (1909) 65 S. E. 538, 110 Va. 165, reversed in part and affirmed in part (1910) 31 S. Ct. 49, 218 U. S. 452, 54 L. Ed. 1107.

In National Bank of Commerce v. Downie (Wash. 1910) 218 U. S. 345, 31 S. Ct. 89, 54 L. Ed. 1065, affirming (1908) 161 F. 839, 88 C. C. A. 657, a partnership assigned to certain banks as collateral security for loans certain claims for money due from the United States to the partnership upon account of contracts entered into between said partnership and the United States for the furnishing of materials to various government departments. All of the assignments were made after the entering into of said contracts, and after partial performance thereof by the partnership, before the allowance of any of the claims or the ascertainment of the amount due thereon or the issuing of any warrant for the payment thereof. Subsequently the partnership became bankrupt, and it was held that the assignments were void as against the trustee in bankruptcy. The court quoted with approval emphasized by italics the statement in the opinion in Spofford v. Kirk (Dist. Col. 1878) 97 U. S. 484, 24 L. Ed. 1032, that in R. S. sec. 3477, Congress "intended to render *all* claims against the government *inalienable alike in law and in equity, for every purpose, and between all parties.*" In support of its conclusion the court also cited and quoted from U. S. v. Gillis (Ct. Cl. 1877) 95 U. S. 407, 24 L. Ed. 503; St. Paul R. Co. v. U. S. (Ct. Cl. 1885) 112 U. S. 733, 5 S. Ct. 366, 28 L. Ed. 861; and Nutt v. Knut (Miss. 1906) 200 U. S. 13, 26 S. Ct. 216, 50 L. Ed. 348.

"Where there is no assertion of a lien upon or interest in the claim, the assignment may be looked to as creating a legal obligation against the general estate of the assignor." Mechanics' Bank, etc., Co. v. Knoxville, etc., R. Co. (1923) 251 S. W. 906, 148 Tenn. 113.

"We cannot say, when the statute declares all transfers and assignments of the whole of a claim, or any part of interest therein, and all orders, powers of attorney, or other authority for receiv-

ing payment of the claim, or any part thereof, shall be absolutely null and void, that they are only partially null and void, that they are valid and effective as between the parties thereto, and only invalid when set up against the government." Spofford v. Kirk (Dist. Col. 1878) 97 U. S. 484, 24 L. Ed. 1032. To the same point see Belt's Case (1879) 15 Ct. Cl. 92.

52. Right of set-off as affected by assignment.—The right of set-off is not affected by an assignment of the claim. U. S. v. Harris (Ill. 1897) 77 F. 821, 23 C. C. A. 483.

53. Effect of assignment as to rights of a surety.—The equity of a surety of a contractor held superior to an assignment. Henningsen v. United States Fidelity & Guaranty Co. (Wash. 1908) 28 Sup. Ct. 389, 208 U. S. 404, 52 L. Ed. 547, affirming (1906) 143 F. 810, 74 C. C. A. 484.

Between February and May, 1890, a bank, in reliance on an agreement by a contractor, employed by the government in 1888 to build a custom house, to deliver to it the 10 per cent. of the contract price reserved by the government, made certain advances to the contractor, which it was alleged, were used in completing the building. In May, 1890, the contractor defaulted, and his surety completed the work. It was held that the lien, if any, acquired by the bank upon the fund reserved by the government, was subordinate to the equity of the surety therein, arising at the date of the contract, since it must be recognized that the terms on which the original contract was made by the United States were in no wise affected or changed by the agreement subsequently made with the Prairie Bank. Prairie State Nat. Bank v. U. S. (Ct. Cl. 1896) 17 Sup. Ct. 142, 164 U. S. 227, 41 L. Ed. 412.

54. Validity of assignments as against trustee in bankruptcy.—Assignments as collateral security for a loan of unallowed claims against the United States on account of contracts for furnishing materials to the various departments of the government, being in direct opposition to this section, can confer no interest in the assignees, as against the trustee in bankruptcy of the assignors. National Bank of Commerce v. Downie (Wash. 1910) 31 Sup. Ct. 89, 218 U. S. 345, 54 L. Ed. 1065, 20 Ann. Cas. 1116, affirming judgment (1908) 161 F. 839, 88 C. C. A. 657.

An assignment of a claim against the United States for money due under a contract is void to transfer the claim, as against the trustee in bankruptcy of the assignor, unless executed with the formalities required by this section, and unless the claim has been previously allowed and a warrant issued for its payment, which is essential to its assignability under this section. Guarantee Title & Trust Co. v. First Nat. Bank of Huntingdon, Pa. (Pa. 1911) 185 F. 373, 107 C. C. A. 429, modifying order In re Pittsburgh Industrial Iron Works (D. C. Pa. 1910) 179 F. 151. Order affirmed on rehearing Guarantee Title & Trust Co. v. First Nat. Bank of Huntingdon (1911) 193 F. 52, 113 C. C. A. 382.

Where a corporation, before bankruptcy, assigned to plaintiff all moneys accruing under its contract with the United States, to secure payment of its promissory notes, providing for an equitable lien on the contract price, it was held, that plaintiff's failure to give notice did not affect its rights as against the assignor. Jennings v. Whitney (1916) 112 N. E. 655, 224 Mass. 138.

55. Validity as between different assignees.—If an assignment of a claim is within the statute as between the parties and the United States, the junior assignee, who has obtained the money in violation of or contrary to it, ought not to be allowed to set it up in a suit to prevent the senior assignee from recovering that portion of it which in equity belongs to him. Dowell v. Cardwell (D. C. Or. 1877) 4 Sawy. 217, 7 Fed. Cas. No. 4,039.

56. Right of principal to sue on contract made in agent's name.—An action may be maintained in the Court of Claims by a principal in his own name, though the contract is in the name of his agent. And joining such agent as party plaintiff, though he have no legal interest, will not defeat the action. Ramsdell v. U. S. (1866) 2 Ct. Cl. 508.

57. Judgment or decision against assignee as bar to assignor's claims.—Where an assignment of a claim is void by statute, a judgment against the assignee will not bar a suit by the assignor. Belt's Executrix v. U. S. (1879) 15 Ct. Cl. 92.

58. Liability of officer in advising assignors as to the law.—An attorney for persons having claims against the government on account of a readjustment of their salaries as postmasters under Act June 12, 1866, Act March 3, 1883, and Act Aug. 4, 1886, has no right of action against the postmaster general because he informed the claimants that they were under no obligation to respect any transfer, assignment, or power of attorney which this section declared null and void. Spalding v. Vilas (Dist. Col. 1896) 16 Sup. Ct. 631, 633, 161 U. S. 483, 40 L. Ed. 780.

59. Burden of proof of transfer.—When an action is brought by a contractor for the use of several assignees, if it be established that the contractor would be entitled to recover if he had not parted with his chose in action, it remains for

those claiming under him to establish the transfer to themselves, and the nature and extent of their respective rights. For where a judgment is recovered in such an action, it is paid by the treasury, not to the nominal claimant, but to the real party in interest. Crowell's Case (1870) 6 Ct. Cl. 23.

§ 204. **Oath by person prosecuting claims.** Any person prosecuting claims, either as attorney or on his own account, before any of the departments or bureaus of the United States, shall be required to take the oath of allegiance, and to support the Constitution of the United States, as required of persons in the civil service. (R. S. § 3478.)

Historical Note

This section of the Revised Statutes was derived from Act July 17, 1862, c. 205, § 1, 12 Stat. 610.

Cross-References

The oath required of persons in the civil service is prescribed by section 16 of Title 5, Executive Departments and Government Officers and Employees.

Former officers, clerks, or employees in any of the Departments are not to prosecute claims in any of them within two years after ceasing to be such officer, clerk, or employee by section 99 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

1. **Admissibility of oath in evidence.**—Where the name, residence, and occupation of the claimant are identical with those of the person described in an oath taken under an amnesty proclamation, it is a sufficient identification, and the oath may be admitted in evidence without further proof that the claimant was the person by whom it was made. Backer v. U. S. (1871) 7 Ct. Cl. 551.

2. **Right to practice as subject to conditions.**—Right to practice before one of departments of government as attorney is not inherent, but a privilege granted by law, and subject to limitations and conditions necessary for protection of both department and public. Goldsmith v. U. S. Board of Tax Appeals (1925) 4 F.(2d) 422, 55 App. D. C. 229, affirmed (1926) 46 S. Ct. 215, 270 U. S. 117, 70 L. Ed. 329.

§ 205. **Same; who may administer.** The oath provided for in section 204 of this title may be taken before any justice of the peace, notary public, or other person who is legally authorized to administer an oath in the State or district where the same may be administered. (R. S. § 3479.)

Historical Note

This section of the Revised Statutes was derived from Act July 17, 1862, c. 205, § 2, 12 Stat. 610.

§ 206. **Claims of disloyalists.** It shall be unlawful for any officer to pay any account, claim, or demand against the United States which accrued or existed prior to the 13th day of April, 1861, except claims for services in the Army, Navy, and Marine Corps of the United States prior to such date, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion, or in favor of any person who during such rebellion was not known to be opposed thereto, and distinctly in favor of its suppression; and no pardon granted shall authorize the payment of such account, claim, or demand, until this section is modified or repealed. This section shall not be construed to prohibit the payment of claims founded upon contracts made by any of the departments, where such claims were assigned or contracted to be assigned prior to the 1st day of April, 1861, to the creditors of such contractors, loyal citizens of loyal States, in payment of debts incurred prior to the 1st day of March, 1861, nor to require proof of loyalty during the late war of the rebellion as a pre-

requisite in any application for bounty land where the proof otherwise shows that the applicant is entitled thereto. (R. S. § 3480; Mar. 11, 1898, c. 57, 30 Stat. 274; July 6, 1914, c. 136, 38 Stat. 454; Feb. 13, 1923, c. 71, 42 Stat. 1226.)

Historical Note

This section is R. S. § 3480 (Res. March 2, 1867, No. 46, 14 Stat. 571) as modified by the other statutes cited in the credits to the text.

Act July 6, 1914, c. 136, 38 Stat. 454, as amended by Act Feb. 13, 1923, c. 71, 42 Stat. 1226, repealed R. S. § 3480, so far as it affected payments for services in the Army, Navy, and Marine Corps, prior to April 13, 1861.

Act March 11, 1898, c. 57, 30 Stat. 274, modified and repealed R. S. § 3480, so far as to dispense with proof of loyalty as a prerequisite in any application for bounty land where the proof otherwise shows the applicant to be entitled thereto.

The provisions of this section were not to apply to the payment of the amounts due to mail contractors for mail services performed in the States in rebellion and before said States engaged in war against the United States, by Act March 3, 1877, c. 105, 19 Stat. 362, which was doubtless omitted as temporary merely.

Notes of Decisions

1. Section not annulled.—The President's proclamation of amnesty of the 25th of December, 1868, did not annul the joint resolution of March 2, 1867, from which this section was taken. (1886) 18 Op. Atty. Gen. 421.

2. Necessity of showing compliance with conditions of pardon.—Where there is a provision in a pardon that it shall "be of no effect until the said H. H. shall take the oath prescribed" in a certain proclamation, it is not sufficient to produce such an oath taken before the pardon was granted, and the pardon cannot be given in evidence. Haym v. U. S. (1871) 7 Ct. Cl. 443.

Where a pardon is offered in evidence by the party in whose favor it was granted, which in terms "is to begin and take effect" from the day on which he takes a prescribed oath, the burden of proof is on the party to show affirmatively that he complied with its condition by taking the oath. Waring v. U. S. (1871) 7 Ct. Cl. 501.

It is an inflexible rule that he who seeks to avail himself of the benefits of a pardon granted conditionally must show a rigid compliance with the conditions which it imposes. Scott's Ex'r v. U. S. (1872) 8 Ct. Cl. 457.

3. Claims affected by this section.—The act, by implication, prohibits officers from paying claims which originated after the war began. Chesapeake & O. R. Co. v. U. S. (1885) 20 Ct. Cl. 49.

This section has been held not to affect the payment of certificates of funded stock issued under Act Oct. 13, 1848. (1868) 12 Op. Atty. Gen. 407.

This section was held applicable only to natural persons, not to corporations. (1871) 13 Op. Atty. Gen. 398. But see Chesapeake & O. R. Co. v. U. S. (1885) 20 Ct. Cl. 49.

In May, 1861, Simeon Hart, then a resident of New Mexico, delivered commissary stores to the government at certain military posts in that territory, for which he received a voucher from the proper officer, but payment thereof was withheld in consequence of an order issued from the War Department during the same month. Hart subsequently took an active part in the rebellion, but was pardoned by the President in November, 1865. He afterward assigned said voucher to two creditors, loyal persons, by whom payment of the same was subsequently demanded. On a question whether payment was prohibited by this section, it was held, that the case presented was not within the prohibition of that resolution, the claim having accrued after April 13, 1861. (1872) 14 Op. Atty. Gen. 145.

The proviso in this section (now part of the second sentence) was intended only to make an exception in favor of claims existing prior to April 13, 1861, which had been assigned or agreed to be assigned to loyal citizens of loyal states prior to April 1, 1861, in payment of debts incurred prior to March 1, 1861. It does not relate to claims additional to those mentioned in the preceding words of the resolution. Id.

The question "whether the claim of G. 'accrued or existed' prior to the date last mentioned, viz., April 13, 1861," is purely a question of fact, to be made out from the evidence presented, and is not in any aspect a question of law; and questions of the former character do not fall within the province of the Attorney-General to determine. (1875) 14 Op. Atty. Gen. 526.

A naval officer in 1860 became entitled to a share in the proceeds of a captured slaver, the amount of which was certified to the Treasury Department by the Secretary of the Navy, but remains unpaid, and in 1861 resigned his commission and entered the Confederate service. It was held that by force of this section payment of such share could not be made, notwithstanding the President's procla-

mation of amnesty of December 25, 1868, and that to authorize its payment an act of Congress was necessary. (1886) 18 Op. Atty. Gen. 421.

The prohibition contained in this section was originally applicable to claims for bounty land; the intent of Congress being to include therein all manner of claims and demands—not only pecuniary, but other claims as well. (1878) 15 Op. Atty. Gen. 451.

4. Authority of officers to transmit claims to court of claims.—This section in effect prohibits the heads of departments from transmitting claims of disloyalists to the court of claims. Hart's Adm'r v. U. S. (1879) 15 Ct. Cl. 414, and (1880) 16 Ct. Cl. 459, affirmed (1886) 6 S. Ct. 961, 118 U. S. 62, 30 L. Ed. 96.

Under sections 1063, 1064, and 1065, R. S. (sections 254 to 256 of Title 28, Judicial Code and Judiciary), the Secretary of War transmitted to the Court of Claims the claim of Henry B. Hart. Where the Court of Claims found facts showing that the claim was one falling within the provisions of this section forbidding any officer to pay any claim in favor of any person who encouraged the late rebellion, it was held not error for the court to refuse to take jurisdiction. Hart v. U. S. (Ct. Cl. 1886) 118 U. S. 62, 6 S. Ct. 961, 30 L. Ed. 96.

5. Effect of other statutes relating to claims.—R. S. § 1063 (section 254 of Title 28, Judicial Code and Judiciary), conferred on claimants neither right nor remedy which did not exist before, and did not extend to claims reserved for future legislation by this section. Hart's Adm'r v. U. S. (1880) 16 Ct. Cl. 459, affirmed (1886) 6 S. Ct. 961, 118 U. S. 62, 30 L. Ed. 96.

6. Removal of political disabilities.—Where the payment of a claim against the government would otherwise come within the prohibition of this section, the fact that the political disabilities of the claimant imposed by the third section of the fourteenth amendment of the Constitution have since been removed by Congress does not free the claim from the operation of that resolution; the prohibition of payment still continues. (1873) 14 Op. Atty. Gen. 329.

7. —— Effect of general amnesty proclamation.—The proclamation of December 25, 1868 (15 Stat. 711), relieves a citizen coming within its terms from making proof of loyalty in an action under the Abandoned or Captured Property Act (incorporated in part in section 268 of Title 28, Judicial Code and Judiciary). Witkowski v. U. S. (1871) 7 Ct. Cl. 393.

Where one guilty of giving aid or comfort to the rebellion dies without pardon and before the General Amnesty Proclamation December 25, 1868, the proclamation does not obliterate the offense; and his administratrix cannot maintain an action for the proceeds of his captured property in the Treasury. Meldrim v. U. S. (1871) 7 Ct. Cl. 595.

8. —— Effect of pardon.—Where a person who has "promoted, encouraged, or sustained" the late so-called "Rebellion" has been granted full pardon and amnesty by the president, this does not entitle him to recover claims against the United States for supplies furnished prior to April 13, 1861, payment of such claims being prohibited by this section, and this, independent of the provision of that resolution that a pardon shall not authorize such payments. Hart v. U. S. (Ct. Cl. 1886) 6 S. Ct. 961, 118 U. S. 62, 30 L. Ed. 96.

Where a pardon "is to begin and take effect" from the day on which a prescribed oath is taken by the party, it does not take effect until the oath be taken. The formal acceptance of the pardon does not supersede the necessity of taking the oath. Waring v. U. S. (1871) 7 Ct. Cl. 501.

A pardon restores to civil rights, to the enjoyment of property, the right to sue, etc., but does not confer the right to take money from the Treasury where Congress have enacted that it shall not be paid by executive officers to persons who "promoted, encouraged, or in any manner sustained the late rebellion." Hart's Adm'r v. U. S. (1879) 15 Ct. Cl. 414.

This section operated upon nothing conferred by the pardon of the executive, and does not conflict with the pardoning power of the President. Hart's Adm'r v. U. S. (1880) 16 Ct. Cl. 459, affirmed (1886) 6 S. Ct. 961, 118 U. S. 62, 30 L. Ed. 96.

9. Limitations.—Where an officer in the United States Army served as a cadet at West Point from July 1, 1842, to July 1, 1846, and as an officer in the Army from July 1, 1846, to January 28, 1861, when he resigned and accepted a commission in the Confederate Army, and died intestate October 4, 1862, and his administratrix brought suit on July 3, 1920, the claim is barred by the statute of limitations and his administratrix cannot recover longevity pay for cadet service as more than 6 years had elapsed during which an action could be brought even though the period from the date of the enactment of R. S. 3480 (this section) to its partial repeal by Act July 6, 1914 (incorporated in this section) be eliminated. Anderson v. U. S. (1922) 57 Ct. Cl. 242.

§ 207. Retention of money due States in default. Whenever any State is in default in the payment of interest or principal on invest-

ments in stocks or bonds issued or guaranteed by such State and held by the United States in trust, the Secretary of the Treasury shall retain the whole, or so much thereof as may be necessary, of any moneys due on any account from the United States to such State, and apply the same to the payment of such principal and interest, or either, or to the reimbursement, with interest thereon, of moneys advanced by the United States on account of interest due on such stocks or bonds. (R. S. § 3481.)

Historical Note

This section of the Revised Statutes was derived from Act March 25, 1870, c. 30, 16 Stat. 77.

A requirement that on the settlement of certain claims of certain states any bonds or other evidences of debt of either of said states held by the United States on any account whatever should be credited as offsets to the United States was made by Act May 27, 1902, c. 887, 32 Stat. 235, apparently omitted from the Code as special and temporary.

Cross-References

A provision for setting off an indebtedness to the United States against any judgment against the United States is contained in section 227 of this title.

Notes of Decisions

1. West Virginia's share of debt of Virginia to United States.—This section makes it the duty of the Secretary of the Treasury to insist upon the right of set-off against the demands of the state of West Virginia for refund of the direct tax to the extent of the equitable proportion of the debt of Virginia to the United States for which West Virginia is liable. (1891) 20 Op. Atty. Gen. 240.

Where a state treasurer has refused to pay state bonds past due, held in trust by the Secretary of the Interior for certain Indian tribes, the Secretary of the Interior may authorize the acceptance of a proposition by a citizen of the state to purchase the bonds, provided the market value does not exceed the face value of the bonds with accrued interest, and provided the acceptance will best subserve the interest of the trust. "If the United States has advanced for the state any money on account of the interest due on said bonds, and there is 'any moneys due on any account from the United States to such state,' it is the duty of the treasurer to retain the interest upon such advances from such money." (1887) 18 Op. Atty. Gen. 581.

§ 208. Payment to officers for horses lost. Except as provided in section 218 of this title, any field, or staff, or other officer, mounted militiaman, volunteer, ranger, or cavalryman, engaged in the military service of the United States, who sustains damage without any fault or negligence on his part, while in the service, by the loss of a horse in battle, or by the loss of a horse wounded in battle, which dies of the wound, or which, being so wounded, is abandoned by order of his officer and lost, or who sustains damage by the loss of any horse by death or abandonment because of the unavoidable dangers of the sea, when on board a United States transport vessel, or because the United States fails to supply transportation for the horse, and the owner is compelled by the order of his commanding officer to embark and leave him, or in consequence of the United States failing to supply sufficient forage, or because the rider is dismounted and separated from his horse and ordered to do duty on foot at a station detached from his horse, or when the officer in the immediate command orders the horse turned out to graze in the woods, prairies, or commons, because the United States fails to supply sufficient forage, and the loss is consequent thereon, or for the loss of necessary equipage, in consequence of the loss of his horse, shall be allowed and paid the value thereof, not to exceed $200. But any payment which is made to any one for the use and risk, or for forage, after the death,

loss, or abandonment of his horse, shall be deducted from the value thereof, unless he satisfies the paymaster at the time he makes the payment, or thereafter shows, by proof, that he was remounted, in which case the deduction shall only extend to the time he was on foot. And any payment made to any person above mentioned, on account of clothing to which he is not entitled by law, shall be deducted from the value of his horse or accouterments. (R. S. § 3482; June 22, 1874, c. 395, 18 Stat. 193; Jan. 9, 1883, c. 15, 22 Stat. 401; Aug. 13, 1888, c. 868, 25 Stat. 437.)

Editorial comment.—It has been suggested that this section is no longer in force. It was, however, held in Griffis v. U. S. (1917) 52 Ct. Cl. 170, to be still in force, and U. S. v. Babcock (Ct. Cl. 1919) 250 U. S. 328, 332, 39 S. Ct. 464, 465, has been thought to sanction the holding of the Court of Claims in the Griffis case, supra. It is also said that this section is regarded by the General Accounting Office as still effective except as affected by section 218 of this title.

Historical Note

This section is R. S. § 3482, which was derived from Act March 3, 1849, c. 129, § 1, 9 Stat. 414.

Act June 22, 1874, c. 395, § 1, 18 Stat. 193, provided that section 1 of the Act of 1849 should not be construed to deny payment for horses purchased in states in insurrection, and that payment should not be refused where loss resulted from any exigency or necessity of the military service, unless caused by fault or negligence of the claimant. Section 2 of that act required claims to be presented prior to January 1, 1876.

Act Jan. 9, 1883, c. 15, § 1, 22 Stat. 401, extended the time for filing claims for one year from the date of that act. Section 2 of that act barred claims not filed within the time prescribed.

Act Aug. 13, 1888, c. 868, § 2, 25 Stat. 437, suspended for three years the limitation theretofore imposed by law on the presentation of claims for the loss of horses and equipment "during the late war." The other provisions of that act, contained in section 1 thereof, were temporary merely.

R. S. § 3489, required claims for collecting, drilling, or organizing volunteers for the war of the rebellion, and claims for horses lost prior to Jan. 1, 1872, to be presented before June 30, 1874. It was doubtless omitted as obsolete.

Provisions for payment of particular claims of states for expenses incurred in raising volunteers, and for other similar advances and expenditures, were contained in the urgent deficiency appropriation act of Feb. 14, 1902, c. 17, 32 Stat. 30, and in the act for the allowance of certain claims, etc., Act May 27, 1902, c. 887, 32 Stat. 235.

Cross-References

A permanent appropriation to pay for horses and other property lost, etc., in the military service, under the provisions of this chapter, is made by section 711 (par. 13) of this title.

Provisions for the settlement of claims of officers, etc., in the military service for the loss of personal effects are made by section 218 of this title.

Notes of Decisions

1. Present effectiveness.
2. Purpose and operation in general.
3. Requisite facts to authorize recovery.
4. Persons who may receive relief.
5. Equipment for which payment may be made.
6. Effect of acceptance of commutation instead of forage.
7. Negligence or fault of owner or his agents.
8. Jurisdiction of claims.
9. —— Jurisdiction of third auditor and awards made by him.
10. Decisions under the Acts of 1874, 1883, and 1888.
11. Decisions under R. S. § 3489.
12. Decisions under former acts.

See, also, notes under section 218 of this title.

1. Present effectiveness.—This section was intended to provide for losses to those engaged in actual military service in time of war, and when Act June 22, 1874, c. 395 (temporary), expired by its own limitation, this section remained in force unaffected thereby. Griffis v. U. S. (1917) 52 Ct. Cl. 170.

2. Purpose and operation in general.—An officer may recover for more than one horse lost in the same battle, but the recovery is limited to the number which the army regulations require him to keep. Powell v. U. S. (1865) 1 Ct. Cl. 400.

The purpose of this act, so far as it relates to officers or soldiers furnishing their own horses, was twofold; To enable the government to hire horses at low rates; to apportion the risk between the owner

and the employer. Valdez v. U. S. (1880) 16 Ct. Cl. 550.

The obligations which the statutes cast upon the government and upon the officer or soldier furnishing his own horse stated. Id.

Under this section the fact of a payment having been made to a soldier as a mounted man after the loss of his horse is not conclusive evidence that he was remounted during the time for which he was paid. (1858) 9 Op. Atty. Gen. 185.

This is a remedial statute, and should accordingly be construed so as to advance the remedy. (1861) 10 Op. Atty. Gen. 21.

Claims of officers and soldiers for horses lost in the military service, where their horses were in service simply as a part of the equipment belonging to and furnished by them, are allowable only under the provisions of this section. (1874) 14 Op. Atty. Gen. 360.

This section and section 209 of this title provide, respectively, for a separate and distinct class of claims. The two classes distinguished from each other. (1874) 14 Op. Atty. Gen. 360.

"Use" of a horse, in this statute, does not mean the active employment of the animal in a military expedition. (1858) 9 Op. Atty. Gen. 151.

The word "mounted" does not necessarily imply that the soldier is either on his horse or with his horse. It indicates the general character of the corps or service. Id.

This statute did not authorize the auditor to review the payments made to the soldier on account of forage for other horses than the one dead, lost, or abandoned, but confined his inquiry to the period between the date of the death, loss, or abandonment and the date at which the soldier was remounted. If he shows that he was remounted, "the deduction shall only extend to the time he was on foot." (1858) 9 Op. Atty. Gen. 151.

3. Requisite facts to authorize recovery.—To authorize a judgment it is necessary to prove: (1) That the claimant owned a horse which he took into the military service; (2) that the horse was lost; (3) that the loss resulted from an exigency or necessity of the military service; and (4) that the loss was without fault or negligence on the part of the claimant. Irby v. U. S. (1883) 18 Ct. Cl. 259.

The statute regards the separation of a man from his horse by compelling him to do duty at another station as a proximate cause, and in such a case the court cannot go behind that cause to inquire whether the separation was brought about by the soldier's neglect. Valdez v. U. S. (1880) 16 Ct. Cl. 550.

The statute casts all risks upon the government where "the rider was dismounted and separated from his horse, and ordered to do duty at a station detached from his horse." In contemplation of the statute, the soldier is entitled to retain the care and custody of his own horse so long as he is held responsible for its loss. Id.

In time of war and in conflicts with Indians, horses, if killed, or captured without negligence or undue carelessness on the part of their owners, will be paid for by the government, under this section. Sibley v. U. S. (1914) 49 Ct. Cl. 242.

By the term "battle" the statute includes all the encounters which may occur between the troops of contending armies. Powell v. U. S. (1865) 1 Ct. Cl. 400.

Lieutenant Mansur went on an expedition up the Red River, leaving his horse and saddle behind with the regiment to which he belonged. During his absence the horse and saddle were, by order of the colonel of his regiment, taken and used in the military service without his knowledge and consent, and while so in such service were lost. Claim being made by him for the value of the property, it was held that the case fell within section 209 of this title, and not within this section. (1874) 14 Op. Atty. Gen. 367.

The provisions in this section for pay to army officers for horses lost were intended to grant a remedy only in cases arising out of actual hostilities, either in time of war or insurrection. Griffis v. U. S. (1916) 52 Ct. Cl. 1.

4. Persons who may receive relief.—An officer who is not required by the army regulations to be "mounted," but who is detailed on duty which, in the opinion of his commanding general, renders it "necessary and proper" for him to be mounted, may recover for horses lost in battle. Powell v. U. S. (1865) 1 Ct. Cl. 400.

The statutes in force which provide indemnity for officers' horses lost in certain circumstances apply to officers of the regular Army as well as to volunteers. (1857) 8 Op. Atty. Gen. 293.

Under this act mounted volunteers are entitled to compensation for horses lost or destroyed by unavoidable accident while in the service of the United States. (1859) 9 Op. Atty. Gen. 334.

A deserter cannot recover for his horse, captured by the enemy, under this section and section 209 of this title, though his claim comes within the very letter of the statute. Tapia v. U. S. (1880) 16 Ct. Cl. 561.

5. Equipment for which payment may be made.—The relief given to an officer by the statute cannot be extended so as to include swords, pistols, or any other property than horses and horse equipage. Powell v. U. S. (1865) 1 Ct. Cl. 400.

The "equipage" referred to by the statute is horse equipage; and by the term

"necessary equipage" is meant only the equipage prescribed by regulations. Id.

The statute makes no distinction between a soldier's horse and horse equipments. Where the loss was due to the same cause, the liability follows the same rule. Valdez v. U. S. (1880) 16 Ct. Cl. 550.

6. Effect of acceptance of commutation instead of forage.—When soldiers funish their own forage and receive commutation pay therefore, they are estopped from setting up, under this statute that the loss was "in consequence of the United States failing to supply sufficient forage." Valdez v. U. S. (1880) 16 Ct. Cl. 550.

The receipt of commutation for forage is not conclusive evidence that the soldier had previously elected to take it; but throws on him the burden of showing that he could not obtain forage in kind. (1859) 9 Op. Atty. Gen. 334.

If a soldier chooses to accept commutation instead of forage, he cannot recover compensation for the horse which he may starve by his mistaken economy. (1858) 9 Op. Atty. Gen. 151.

But where the commanding officer orders the horse turned out to graze in the woods, prairies, or commons, because the United States failed to supply sufficient forage; and where the loss was in consequence of the turning out, and not of starvation, the commanding officer is the judge of the necessity of such a course, and as against the soldier who has suffered loss, the government cannot say that the officer was in error. Id.

7. Negligence or fault of owner or his agents.—Where it is not shown that the safety of the horse was properly provided for by the keeper, who was a representative and agent of the owner, and for whose conduct and acts he is responsible, the plaintiff is not entitled to recover. Sibley v. U. S. (1914) 49 Ct. Cl. 242.

"The words 'unless it was caused by the fault or negligence of such officers or enlisted men' cannot be considered as intended to mean just what they express, for that would be equivalent to saying that a loss might be caused at once by an 'exigency or necessity of the military service,' and by 'the fault or negligence of the officers or enlisted men.' The terms used must be considered as intended to mean that payment might be made 'in any case where the loss resulted from any exigency or necessity of the military service' without 'fault or negligence of such officers or enlisted men.'" The Thomas Motion (1880) 16 Ct. Cl. 522.

8. Jurisdiction of claims.—The Court of Claims has jurisdiction of claims arising under this section. The Thomas Motion (1880) 16 Ct. Cl. 522; Irby v. U. S. (1883) 18 Ct. Cl. 259. And see section 250 (par. 1) of Title 28, Judicial Code and Judiciary.

Certain provisions in Act March 3, 1849 (incorporated in part in this section), which, it had been thought, gave exclusive jurisdiction to the third auditor of claims for horses lost in battle, were repealed by R. S. § 5596 (repealing section). Thomas v. U. S. (1880) 16 Ct. Cl. 522.

9. —— Jurisdiction of third auditor and awards made by him.—See notes under section 209 of this title.

10. Decisions under the Acts of 1874, 1883, and 1888.—Under Act Jan. 9, 1883, and Act August 13, 1888 (temporary), right to present claims against the United States, under this section, as amended by Act June 22, 1874 (temporary), for horses lost in military service, finally expired in 1891. U. S. v. Babcock (1919) 39 S. Ct. 464, 250 U. S. 328, 63 L. Ed. 1011, reversing (1918) 53 Ct. Cl. 629.

Act June 22, 1874, c. 395, 18 Stat. 193, in effect amended this section, so as practically to do away with the specification therein contained of cases wherein compensation for the loss of horses in battle might be allowed, and in lieu thereof authorized such allowance "where the loss resulted from any exigency or necessity of the military service." Thomas v. U. S. (1880) 16 Ct. Cl. 522.

When claim was presented to the third auditor, the requirement of Act of 1874, § 2, was fully met. Id.

"Exigency" within the Act of 1874 (temporary), see Hardie v. U. S. (1904) 39 Ct. Cl. 250.

"Filed in the proper department" construed. Id.

Jurisdiction of the court of claims, see Hardie v. U. S. (1904) 39 Ct. Cl. 250; Cox v. U. S. (1906) 41 Ct. Cl. 86; Terrill v. U. S. (1893) 28 Ct. Cl. 465.

Claims for loss of horses in military service were barred by Act June 22, 1874, c. 395 (temporary), after the stipulated period, and were not revived until Act Jan. 9, 1883, c. 15 (temporary), which revived the right for one year only. Griffis v. U. S. (1916) 52 Ct. Cl. 1.

The inhibition in Act Jan. 9, 1883, c. 15, against the presentation of claims not "received, considered, or audited by any department of the government" within one year of its passage, had reference to any branch of the government, and not to the executive departments only. Id.

11. Decisions under R. S. § 3489.—Claims to which applicable, and duty to examine and audit, see (1879) 16 Op. Atty. Gen. 284.

12. Decisions under former acts.—See (1822) 1 Op. Atty. Gen. 543; (1833) 2 Op. Atty. Gen. 570; (1834) 2 Op. Atty. Gen. 658; (1814) 5 Op. Atty. Gen. 701.

§ 209. Payment for property lost while in military service. Except as provided in section 218 of this title, every person who sus-

tains damage by the capture or destruction by an enemy, or by the abandonment or destruction by the order of the commanding general, the commanding officer, or quartermaster, of any horse, mule, ox, wagon, cart, sleigh, harness, steamboat or other vessel, railroad engine or railroad car, while such property is in the military service, either by impressment or contract; or who sustains damage by the death or abandonment and loss of any horse, mule, or ox, while in the service, in consequence of the failure on the part of the United States to furnish the same with sufficient forage, or whose horse, mule, ox, wagon, cart, boat, sleigh, harness, vessel, railroad engine, or railroad car is lost or destroyed by unavoidable accident while such property is in the service, shall be allowed and paid the value thereof at the time when such property was taken into the service, except in cases where the risk to which the property would be exposed was agreed to be incurred by the owner: *Provided,* It appears that such loss, capture, abandonment, destruction, or death was without any fault or negligence on the part of the owner of the property, and while the property was actually employed in the service of the United States. (R. S. § 3483.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1849, c. 129, § 2, 9 Stat. 415, and Act March 3, 1863, c. 78, § 5, 12 Stat. 743.

Notes of Decisions

1. Enactment, amendment, and repeal.
2. Construction, operation, and effect in general.
3. Proximate cause of loss.
4. Claims within this section.
5. What acts constitute impressment.
6. Voluntary navigation and control by owners of vessel.
7. Assessment of damages.
8. —— Use and service after damage to vessel.
9. Damages in general.
10. —— Lighterage in floating grounded vessel.
11. Right of insurer to subrogation.
12. Authority of Secretary of War to require judicial determination.
13. Jurisdiction of Court of Claims.
14. Petition.
15. Burden of proof and sufficiency of evidence.
16. —— Proof of loyalty.
17. Jurisdiction and authority of third auditor, and awards made by him.

1. Enactment, amendment, and repeal.—This section was not repealed by the fourth section of the legislative, executive, and judicial appropriation act July 12, 1870 (chapter 251). The repealing clause of the latter section operated exclusively on sections 1 and 7 of the act of 1849 (incorporated in part in this section) (1871) 13 Op. Atty. Gen. 507.

Act July 4, 1864, c. 240 (R. S. §§ 300A., 300B, now obsolete) "to restrict the jurisdiction of the Court of Claims," did not repeal this act. (1868) 12 Op. Atty. Gen. 362.

2. Construction, operation, and effect in general.—Government held not liable for loss of vessel in military service. Reybold v. U. S. (Ct. Cl. 1872) 15 Wall. 202, 21 L. Ed. 57.

The cases in which contractors and owners of impressed property may recover examined. Powell v. U. S. (1865) 1 Ct. Cl. 400.

The term "war risk," in a policy wherein the government is the insurer, cannot be extended beyond "the acts of the public enemy" or "the casualties of war." The government does not insure against its own acts. Bogert v. U. S. (1866) 2 Ct. Cl. 159.

Where property was in service by impressment or contract, and not merely by being a part of the equipment furnished by the officer or soldier, such claims are allowable under the provisions of this section, which contains no restrictions as to persons. (1874) 14 Op. Atty. Gen. 360.

Where the question is whether the boat was or was not in the military service by contract, the distinction between a contract which imports the letting of the boat for hire (locatio rei), and one importing merely the carriage of goods for hire (locatio operis mercium vehendarum), is material; contracts of the former kind only being within the statute. (1875) 14 Op. Atty. Gen. 536.

3. Proximate cause of loss.—It is the proximate cause of loss which determines

the liability of the insurer, and not the remote. Hence, where the defendants during the war of the rebellion insure in the charter party of a schooner against the "war risk," and she is driven by a gale within range of the enemy's batteries, but is then at anchor and safe from the perils of the sea, after which the batteries open upon her and destroy her ground tackle, so that, she goes ashore and is captured, the acts of the enemy constitute the proximate cause of the loss, and the defendants are liable. Baker v. U. S. (1867) 3 Ct. Cl. 76.

4. Claims within this section.—One who contracted with the government to transport from port to port, remote from any seat of war, stores and supplies not forming any portion of the stores or supplies of an advancing or retreating army, is not a person in the military service of the United States within this section and a petition alleging attack and capture by hostile Indians without fault of contractor is not sufficient. Stuart v. U. S. (Ct. Cl. 1874) 18 Wall. 84, 21 L. Ed. 816.

A person who is a carrier or transporter of stores or supplies for the United States, which stores and supplies are of a military character and which will be used by the United States as their convenience and necessity require, is not in the military service of the United States, and can claim no benefit under this statute. Id.

This section authorizes payment only for property lost in military service and does not apply to property lost by reason of delay by order of army officers to prevent its reaching the enemy. U. S. v. Irwin (Ct. Cl. 1888) 127 U. S. 125, 8 S. Ct. 1033, 32 L. Ed. 99.

The United States was held to be charterers of a vessel upon a contract of affreightment, and not liable for its loss in Shaw v. U. S. (Ct. Cl. 1876) 93 U. S. 235, 23 L. Ed. 880.

This statute does not apply to the teams of an army contractor, since they are not in the service of the United States. Grant v. U. S. (1863) 1 Ct. Cl. 61, affirmed (1869) 7 Wall. 331, 19 L. Ed. 194.

Where a quartermaster, with the approval of his commanding general, detains a contractor's ice barge, but enters into an agreement to deliver her at a certain place within a fixed period "or pay a fair valuation for the same," the government will be liable if the barge be not returned. Conrad v. U. S. (1867) 3 Ct. Cl. 89.

This section does not apply to property of a contractor in military service, and while so used under the control and management of such contractor. Porter v. U. S. (1873) 9 Ct. Cl. 356.

Property intended for sale to the Mormons in Utah was seized by the Johnston expedition in 1857 to prevent its reaching the insurgents, and was subsequently used by the army. It was held that the owners were entitled to recover its value. (1861) 10 Op. Atty. Gen. 21.

Claimant was held entitled to compensation for the loss of the steamer Star of the West under the circumstances of that case. (1862) 10 Op. Atty. Gen. 310.

Where the loss of a steamboat has been caused by carelessness, a claim for its value does not fall within the provisions of this section. (1869) 13 Op. Atty. Gen. 120. Thus where by the charter party the United States engaged to pay just compensation for any injury to or for the destruction of the boat, if she was injured, captured, or destroyed by the enemy, or by any event not incident to the navigation of the river or rivers on which she might be employed, if the boat was lost by the carelessness of the officers or crew, being agents of the owner, and not acting under explicit lawful orders from the proper officers of the government, the United States would not be liable. (1869) 13 Op. Atty. Gen. 119.

A barge used for transportation of merchandise, and owned by a person not in the military service, is within the species of property enumerated in this section as property to be paid for when lost in the military service of the United States. (1868) 12 Op. Atty. Gen. 362.

The facts and circumstances presented failing to show that the claimant's property was destroyed while in the military service of the United States either by impressment or contract, it was held, that the claim was not within the provisions of this section. (1872) 14 Op. Atty. Gen. 137.

This section was held to apply to the claim of an officer whose horse was impressed and lost in military service while such officer was absent on duty. (1874) 14 Op. Atty. Gen. 367.

To bring a claim for the loss of a steamboat within this section it must be shown: (1) That the boat was in the military service either by impressment or contract; (2) that the loss occurred while the boat was actually employed in such service; (3) that it was caused by an unavoidable accident, and not through any fault or negligence on the part of the owner; (4) that the case is not one wherein the risk was agreed to be incurred by the owner. (1875) 14 Op. Atty. Gen. 535.

A vessel chartered by quartermaster's department was used as transport in expedition against Port Royal, S. C., and in such service lost at sea without fault of owner and while under control of United States officers. It was held that the owners were entitled to recover. (1879) 16 Op. Atty. Gen. 242.

The steamer "Joseph Pierce," at the time of her destruction by fire, July 31,

1865, was not in the military service of the United States either by contract or impressment, and accordingly the accounting officers of the Treasury had no jurisdiction to allow the value thereof to the owners. (1881) 17 Op. Atty. Gen. 90.

5. What acts constitute impressment.—An order to the owners of a vessel to get her ready under pain of impressment to transport a cargo held not to make the government owners for the voyage. Reed v. U. S. (1870) 11 Wall. 591, 20 L. Ed. 220, reversing (1868) 4 Ct. Cl. 132.

Where a vessel, which had gone to a Southern port during the rebellion with a cargo for the government, was compelled, under protest, by a quartermaster to proceed to another port, but was not seized nor taken from the possession of the master and crew, she was "impressed" into the military service and not "appropriated" within the meaning of Act July 4, 1864 (R. S. §§ 300A, 300B, now obsolete); so that an injury suffered by reason of the impressment was not "damage" done by the army within the meaning of the last act. Kimball v. U. S. (1869) 5 Ct. Cl. 252, reversed on other grounds (1871) 13 Wall. 636, 20 L. Ed. 503.

Horses which constitute a part of the equipment of officers and soldiers, furnished by themselves, are not in the military service by "contract," much less by "impressment," within the meaning of the term as employed in this section. (1874) 14 Op. Atty. Gen. 360.

To make an impressment binding upon the government it is essential that there be shown to have existed such an emergency as justified the officer in taking the property; but this, together with an actual taking, or what is equivalent thereto, being satisfactorily established by the claimant, nothing more remains to be proven by him under that head. (1875) 14 Op. Atty. Gen. 536.

A threat to seize a vessel unless certain troops and ammunition are received and transported, resulting in the compulsory submission of the master of the vessel, does not constitute an impressment. (1881) 17 Op. Atty. Gen. 90.

6. Voluntary navigation and control by owners of vessel.—An owner, navigating his vessel through his own master and crew, cannot recover for her loss by fire, although the vessel was in the military service of the government by impressment, and the loss was without fault, or negligence on the part of the owners or their representatives. The voluntary navigation of the vessel by the owners, after impressment, changes the character of the transaction from impressment to contract, and retaining control of her navigation takes the case out of the statute. Shaw v. U. S. (1873) 9 Ct. Cl. 388, affirmed (1876) 93 U. S. 235, 23 L. Ed. 880.

In June, 1865, a steamboat was chartered by the government to run on the Chattahoochee and Appalachicola rivers, the mangement of the craft being left in charge of the owners. While under charter it was accidentally lost by fire. It was held that the boat was not in the military service within the meaning of this section, and the United States incurred no liability for the loss. (1877) 15 Op. Atty. Gen. 205.

7. Assessment of damages.—The government is an insurer of a steamboat impressed into its military service, and hence in the assessment of damages for her service a deduction should be made from ordinary rates. Russell v. U. S. (1869) 5 Ct. Cl. 121, affirmed (1871) 13 Wall. 623, 20 L. Ed. 474.

8. —— Use and service after damage to vessel.—Where payments have been made for the services of a steamboat after she has been incapacitated, and the defendants have became liable for her loss, but before her value has been fixed or paid under this section, and the defendants do not ask that the payments be reexamined, the court will not disturb the transaction, nor treat the payments as a set-off. Reed v. U. S. (1868) 4 Ct. Cl. 132, affirmed (1870) 11 Wall. 591, 20 L. Ed. 220. And see Reed v. U. S. (Ct. Cl. 1871) 11 Wall. 591, 20 L. Ed. 220.

9. Damages in general.—Under Act March 3, 1849 (incorporated in part in this section), the United States stand in the relation of insurers of a boat taken for military purposes, and fulfill that obligation by paying for her value when destroyed or lost in their service; and that payment relates back to the commencement of the accident by which the boat is finally destroyed, and they are not liable for damages in the meantime. Reed v. U. S. (1868) 4 Ct. Cl. 132, affirmed (1870) 11 Wall. 591, 20 L. Ed. 220. And see Reed v. U. S. (Ct. Cl. 1871) 11 Wall. 591, 20 L. Ed. 220.

The United States are not liable for a per diem compensation of a steamboat taken for military purposes after the owners abandoned the boat and made their protest to cover their insurance. Id.

Where a vessel is taken from the owners and impressed into the military service and suffers injuries while navigated by government officers, the owners may recover for her use and service during the period of her repairs. Dozier v. U. S. (1873) 9 Ct. Cl. 342.

Where a boat was fully insured, and the claimants resorted to the insurers for compensation for injury and obtained it, they cannot exact remuneration from the government on that account. Id.

10. —— Lighterage in floating grounded vessel.—Where a boat, impressed into the military service, grounds, by reason of

being overladen by a quartermaster, the defendants are liable for the lighterage paid by the owner in getting her afloat. Russell v. U. S. (1869) 5 Ct. Cl. 121, affirmed (1871) 13 Wall. 623, 20 L. Ed. 474.

11. Right of insurer to subrogation.—Where a vessel which has been impressed into the military service is lost, and the insurers pay the owner the amount of certain policies on the vessel, they may maintain an action in the name of the owner, under Act March 3, 1849, and Act March 3, 1863 (both incorporated in part in this section). Shaw v. U. S. (1872) 8 Ct. Cl. 488.

The insurers and underwriters are entitled to be subrogated to the rights of the owners to the extent of the loss paid. (1870) 13 Op. Atty. Gen. 182.

12. Authority of Secretary of War to require judicial determination.—Where a vessel was lost while in the military service of the government, and it appeared that the owner had a just legal claim on the insurers for the loss, the Secretary of War was advised not to entertain an application for indemnity from the government until the liability of the insurance company should be judicially determined. (1862) 10 Op. Atty. Gen. 267.

Where a claim against the United States for the value of property lost in the military service, filed under the provisions of this section, had been adjusted by the accounting officers of the Treasury, and the amount found due the claimant certified to the Secretary of War for the issue of a requisition for payment, it was held that it was competent to the Secretary of War, if it should appear that this claim belonged to the class described in the seventh section of Act June 25, 1868, c. 71 (sections 254 to 256 of Title 28, Judicial Code and Judiciary), to withhold his requisition and cause the claim to be transmitted to the Court of Claims for adjudication, notwithstanding the amount found due thereon had been certified to him as aforesaid. (1869) 13 Op. Atty. Gen. 164.

13. Jurisdiction of Court of Claims.—Whether property was impressed into the military service is a jurisdictional question, which may be inquired into in any judicial proceeding based upon a judgment or award of the third auditor. Porter v. U. S. (1885) 20 Ct. Cl. 307.

14. Petition.—A petition which alleges that while petitioner was proceeding, in the execution of his contract, to transport military stores and supplies with a train of wagons from Kansas to New Mexico, the train was attacked by a "band of hostile Indians," and that, without any default or neglect on the part of the petitioner, fifty-six head of oxen were captured by the Indians, does not set up such a claim as can be maintained under this statute. The averment that the attack was by a band of hostile Indians does not allege such hostility, from the enmity of an organized community to the United States as a party engaged in war, as is contemplated by this section. Stuart v. U. S. (Ct. Cl. 1873) 18 Wall. 84, 21 L. Ed. 816.

15. Burden of proof and sufficiency of evidence.—When the evidence of ownership is incomplete a party cannot recover for property taken or destroyed by the government. Wiggins v. U. S. (1866) 2 Ct. Cl. 345.

In a steamboat claim under this section, the burden of proof rests on the claimant, and before he can become entitled to compensation for the loss of his property he must prove everything made essential by the act—the ownership, the military service, the destruction, the unavoidable character of the accident, and the entire absence of fault or negligence on his part. (1871) 13 Op. Atty. Gen. 381.

To bring a claim for the loss of a steamboat within this section, it must be shown: "First, that the boat was in the military service either by impressment or contract; second, that the loss occurred while the boat was actually employed in such service; third, that it was caused by an unavoidable accident, and not through any fault or negligence on the part of the owner; fourth, that the case is not one wherein the risk was agreed to be incurred by the owner. (1875) 14 Op. Atty. Gen. 536.

16. —— Proof of loyalty.—It is not the duty of the accounting offices of the Treasury to require of claimants proof of loyalty. (1877) 15 Op. Atty. Gen. 652.

17. Jurisdiction and authority of third auditor, and awards made by him.—An award made by the third auditor in favor of the owner of a vessel taken by the government under a contract must be deemed to be an award on the contract, and not a "judgment." Bogert v. U. S. (1866) 2 Ct. Cl. 159.

If an award by the third auditor for a vessel destroyed in the military service of the United States under this section was a "statutory judgment" which might be set up as an estoppel, it was in the nature of a record, and could not be proved by parol. Bogert v. U. S. (1867) 3 Ct. Cl. 18.

The third auditor had exclusive jurisdiction over the accounts and claims for horses and other property destroyed in the military service, under Act Jan. 18, 1837, c. 5. (1842) 4 Op. Atty. Gen. 16.

The act of Congress did not confer upon the auditor a general power of revision over all the accounts of the claimant, and over all payments allowed to him for forage, for other horses than the one dead, lost, or abandoned. (1858) 9 Op. Atty. Gen. 151.

The third auditor, in adjusting, under this section, a claim for the value of a horse lost in the service of the United States, had the right to go behind the settlement of the paymaster after the second comptroller's approval thereof. Id.

A claim for the value of a vessel seized jure belli at New Orleans, upon the capture of that city by the United States naval forces, turned over to the army, and afterwards captured by the rebels, was not within the jurisdiction conferred upon the third auditor by this law. (1865) 11 Op. Atty. Gen. 378.

The third auditor and second comptroller had no power, since the passage of act Feb. 21, 1867, to settle a claim for the value of a barge owned by residents of New Orleans, which was lost in 1864, in the Mississippi river, while under impressment by the military authorities. (1868) 12 Op. Atty. Gen. 362.

This act placed all claims presented under it within the exclusive jurisdiction of the third auditor. It made him the sole tribunal and his awards, called judgments, final. (1882) 17 Op. Atty. Gen. 352.

An award made by the third auditor was held binding upon all officers of the government; the act July 28, 1866 (incorporated in section 72 of this title), being inapplicable. (1882) 17 Op. Atty. Gen. 352, overruling (1869) 13 Op. Atty. Gen. 9.

§ 210. Payment for horses lost by capture. Sections 208 and 209 of this title shall extend to all cases of the loss of horses by any officer, noncommissioned officer, or private in the military service of the United States, while in the line of his duty in such service, by capture by the enemy, whenever it shall appear that such officer, noncommissioned officer, or private was ordered by his superior officer to surrender to the enemy, and such capture was made in pursuance of such surrender. (R. S. § 3484.)

Historical Note

This section of the Revised Statutes was derived from Act June 25, 1864, c. 150, 13 Stat. 182.

Act Feb. 28, 1902, c. 134, §§ 1, 2, 32 Stat. 43, provided for payment for horses, side arms, and baggage taken from Confederate officers and soldiers in violation of terms of surrender. By its provisions the Quartermaster General was directed to investigate claims and pay them on proof therein set out being made. Act March 3, 1903, c. 1006, § 1, 32 Stat. 1048, limited the time for filing such claims to one year, which time was successively extended by Act April 27, 1904, c. 1630, § 1, 33 Stat. 401, Act May 30, 1908, c. 227, § 1, 35 Stat. 499, and Res. June 25, 1910, No. 38, 36 Stat. 883; the last mentioned resolution extending the time to two years from its passage. These acts were evidently omitted as temporary merely.

§ 211. Payment for condemned horses and equipage. Whenever any horse is condemned by a board of officers, on account of his unfitness for service, in consequence of the Government failing to supply forage, such horse and his equipage shall be allowed and paid for: *Provided,* It shall be proven, by satisfactory evidence, whether oral or written, that the condemned horse and the equipage were turned over to a quartermaster of the Army, whether any receipt therefor was given and produced, or not. (R. S. § 3485.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1849, c. 129, § 7, 9 Stat. 416.

§ 212. Payment to guardian for horse lost by minor in military service. When any minor engaged in the military service of the United States, and provided with a horse or equipments, or with military accouterments, by his parent or guardian, dies, without paying for the property, and the same is lost, captured, destroyed, or abandoned in the manner before mentioned, such parent or guardian shall be allowed pay therefor, on making satisfactory proof, as in other

cases, and the further proof that he is entitled thereto by having furnished the same. (R. S. § 3486.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1849, c. 129, § 5, 9 Stat. 415.

§ 213. Payment to owner for horse furnished and lost in military service. When any person other than a minor, engaged in the military service, is provided with a horse or equipments, or with military accouterments, by any person, being the owner thereof, who takes the risk of such horse, equipments, or military accouterments, on himself, and the same is lost, captured, destroyed, or abandoned, in the manner before mentioned, such owner shall be allowed pay therefor, on making satisfactory proof, as in other cases, and the further proof that he is entitled thereto, by having furnished the same, and having taken the risk on himself. (R. S. § 3487.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1849, c. 129, § 6, 9 Stat. 416.

§ 214. Taking testimony as to loss. In executing so much of sections 208, 209, and 211 to 213 of this title, as provides for payment for steamboats and other vessels, and railroad engines or cars, lost or destroyed while in the military service of the United States, the Comptroller General is authorized, in person, or in such manner as he may deem most compatible with the public interests, to take testimony, and make such investigations as he may deem necessary in adjudicating claims; and for such necessary expenses incurred therein, payment may be made upon proper vouchers, certified and approved by the General Accounting Office. (R. S. § 3488; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section is R. S. § 3488, which was derived from Act June 25, 1864, c. 147, § 6, 13 Stat. 160.

References in the original text to the Third Auditor were evidently changed to refer to the Comptroller General and General Accounting Office to conform to section 44 of this title.

§ 215. Settlement of claims not exceeding $1,000; certification of amounts found due to Congress; time for presentation. The head of each department and establishment acting on behalf of the Government of the United States may consider, ascertain, adjust, and determine any claim accruing after April 6, 1917, on account of damages to or loss of privately owned property where the amount of the claim does not exceed $1,000, caused by the negligence of any officer or employee of the Government acting within the scope of his employment. Such amount as may be found to be due to any claimant shall be certified to Congress as a legal claim for payment out of appropriations that may be made by Congress therefor, together with a brief statement of the character of each claim, the amount claimed, and the amount allowed: *Provided*, That no claim shall be considered by a department or other independent establishment unless presented to it within one year from the date of the accrual of said claim. (Dec. 28, 1922, c. 17, § 2, 42 Stat. 1066.)

Historical Note

This section, and sections 216 and 217 of this title were sections 1–3 of an act entitled "An act to provide a method for the settlement of claims arising against the Government of the United States in sums not exceeding $1,000 in any one case," cited in the credit to the text. Section 4 of such act repealed all conflicting laws.

§ 216. Same; definitions. When used in section 215 of this title the terms "department and establishment" and "department or establishment" mean any executive department or other independent establishment of the Government; the word "employee" shall include enlisted men in the Army, Navy, and Marine Corps. (Dec. 28, 1922, c. 17, § 1, 42 Stat. 1066.)

Historical Note

See the historical note to section 215 of this title.

§ 217. Same; effect of acceptance of amount found due. Acceptance by any claimant of the amount determined under the provisions of sections 215 and 216 of this title shall be deemed to be in full settlement of such claim against the Government of the United States. (Dec. 28, 1922, c. 17, § 3, 42 Stat. 1066.)

Historical Note

See the historical note to section 215 of this title.

§ 218. Settlement of claims for loss of property in military service. Private property belonging to officers, enlisted men, and members of the Nurse Corps (female) of the Army, including all prescribed articles of equipment and clothing which they are required by law or regulations to own and use in the performance of their duties, and horses and equipment required by law or regulations to be provided by mounted officers, which since the 5th day of April, 1917, has been or shall hereafter be lost, damaged, or destroyed in the military service, shall be replaced, or the damage thereto, or its value recouped to the owner as hereinafter provided, when such loss, damage, or destruction has occurred or shall hereafter occur without fault or negligence on the part of the owner in any of the following circumstances:

First. When such private property so lost, damaged, or destroyed was shipped on board an unseaworthy vessel by order of an officer authorized to give such order or direct such shipment.

Second. When it appears that such private property was so lost, damaged, or destroyed in consequence of its owner having given his attention to the saving of human life or property belonging to the United States which was in danger at the same time and under similar circumstances, or while, at the time of such loss, damage, or destruction, the claimant was engaged in authorized military duties in connection therewith.

Third. When during travel under orders such private property, including the regulation allowance of baggage, transferred by a common carrier, or otherwise transported by the proper agent or agency of the United States Government, is lost, damaged, or destroyed; but replacement, recoupment, or commutation in these circumstances, where the property was or shall be transported by a common carrier,

shall be limited to the extent of such loss, damage, or destruction over and above the amount recoverable from said carrier.

Fourth. When such private property is destroyed or captured by the enemy, or is destroyed to prevent its falling into the hands of the enemy, or is abandoned on account of lack of transportation or by reason of military emergency requiring its abandonment, or is otherwise lost in the field during campaign. (Mar. 3, 1885, c. 335, § 1, 23 Stat. 350; July 9, 1918, c. 143, subchapter VI, 40 Stat. 880; Mar. 4, 1921, c. 163, 41 Stat. 1436.)

Historical Note

This section is section 1 of the Act of March 3, 1885, c. 335, entitled "An act to provide for the settlement of the claims of officers and enlisted men of the Army for loss of private property destroyed in the military service of the United States," as amended by the other acts cited in the credits to the text.

The Act of 1885, as originally enacted contained only one section. Sections 2, 3, 4, and 5, were added by Act July 9, 1918, c. 143, and sections 6 and 7 by Act March 4, 1921, c. 163. Section 6, as so added, made an appropriation for the payment of claims established under that act. Section 7 repealed so much of Act March 28, 1918, c. 28, § 1, 40 Stat. 479, 480, "as makes provision for the presentation, adjustment, and payment of claims of officers and enlisted men for loss of private property destroyed in the military service."

Act March 2, 1895, c. 190, 28 Stat. 962, made provision for the settlement and payment of claims for the value of private property of officers, petty officers, seamen and others in the naval service, lost and destroyed by shipwreck or other marine disaster, under the circumstances therein specified. That provision was repealed by Act Oct. 6, 1917, c. 85, 40 Stat. 389.

Act March 4, 1915, c. 143, § 1, 38 Stat. 1077, extended the provisions of the Act of March 3, 1885, to cover loss of, or damage to, the regulation allowance of baggage, sustained in shipment under orders, to the extent of the loss or damage over and above the amount recoverable from the carrier. It was evidently omitted from the Code as superseded by the later amendments of the Act of 1885.

Act March 28, 1918, c. 28, § 1, 40 Stat. 479, contained provisions somewhat similar to those of this section and sections 219 to 222 of this title. Those provisions were repealed by Act March 3, 1885, c. 335, § 7, as added by Act March 4, 1921, c. 163, 41 Stat. 1437.

Cross-References

Provisions for the payment to officers, etc., in the military service for horses and equipments lost are made by section 208 et seq. of this title.

Notes of Decisions

1. Losses to which statute applicable.—The absence of an officer properly on leave at the time of the loss will not exclude him from the relief given by the statute if the loss was without fault or negligence on his part. Purssell v. U. S. (1911) 46 Ct. Cl. 509.

A loss occurring May 16, 1899, of private property aboard a transport bound from Porto Rico to New York which was wrecked, though the troops aboard were destined for service in the Philippines after refitting in New York, was not "in time of war" within the meaning of the former text of this section. Newcomber v. U. S. (1916) 51 Ct. Cl. 408.

Claims for loss of horses, killed because infected with glanders without fault or negligence, are not within the terms of this section. Griffis v. U. S. (1917) 52 Ct. Cl. 170.

The term "private property," for which reimbursement is provided by this section when lost in the military service, comprehends privately owned horses, inasmuch as they are not specifically excluded. Andrews v. U. S. (1917) 52 Ct. Cl. 373.

The term "in the military service," limits the government's liability to the loss of property directly caused by military service and in no wise attributable to the fault or negligence of the soldier. Id.

2. Persons entitled to settlement.—This section does not provide to men of Army an "allowance," within section 971 of Title 34, Navy, entitling Marine Corps to pay and allowances of infantry in the Army, so that Marine Corps officer cannot recover thereunder for his personal property destroyed by fire. Harllee v. U. S. (1916) 51 Ct. Cl. 342.

3. Necessity and sufficiency of presentation of claim.—To authorize suit upon a claim arising under this section, it must first be presented to the accounting officers within two years from the date

of the loss. Newcomber v. U. S. (1916) 51 Ct. Cl. 408.

Claims under this section for horses lost in military service must have been presented to the "proper accounting officers" within two years from the occurrence of the loss, and presentation of claims to the quartermaster general is not presentation to the "proper accounting officers." Griffis v. U. S. (1917) 52 Ct. Cl. 170, modifying (1916) 52 Ct. Cl. 1.

The court has no jurisdiction of a claim for personal property lost, brought under this section, unless it be shown that the claim was presented to the accounting officers of the treasury within the time fixed by the statute. Goodman v. U. S. (1917) 52 Ct. Cl. 244.

See also Andrews v. U. S. (1917) 52 Ct. Cl. 373.

4. Extent and nature of jurisdiction conferred on treasury and war departments.—The statute does not confer exclusive jurisdiction on the accounting officers of the treasury. Purssell v. U. S. (1911) 46 Ct. Cl. 509.

Whether the loss happened under the circumstances described in the statute, and comes within the provisions thereof, is a question for the determination of the proper accounting officers of the Treasury, and so does not appertain to the administration of the War Department. (1890) 19 Op. Atty. Gen. 693.

The duty of the Secretary of War in the case of a claim under this section is limited to the determination of whether the property for the loss of which indemnity is claimed was "reasonable, useful, necessary, and proper" for the claimant. Id.

5. Finality of award.—Where the claim of an army officer for the loss of private property in the service was audited, allowed, and paid in the usual manner, the government could not reclaim the money without showing that it was obtained by fraud or under a mistake of fact, notwithstanding Act July 31, 1894 (superseded in part), providing that a revision of an account by the comptroller of the treasury might be obtained within a year after it had been settled by the auditor. U. S. v. Olmsted (Iowa, 1902) 118 F. 433, 55 C. C. A. 249.

A payment made pursuant to this section cannot be recovered back, in the absence of mistake or fraud, which is not shown by a complaint stating that, after payment of the claim, the department disallowed the claim for the reason that the loss was not without fault of the claimant; this being but an allegation of the reason assigned by the department for its action, and not an allegation of the fact that the loss was not without his fault. U. S. v. Willcox (Cal. 1902) 118 F. 729, 55 C. C. A. 519.

6. Acceptance by claimant of amount allowed as satisfaction.—The acceptance by the claimant of the amount allowed by the accounting officers operates as a satisfaction of the claim. Purssell v. U. S. (1911) 46 Ct. Cl. 509.

7. Jurisdiction of Court of Claims.—Under the former text of this section, providing that any claim presented and acted on should be held as finally determined, and should never thereafter be reopened or considered, the Treasury Department was held to have jurisdiction of such a claim, to the exclusion of the Court of Claims. U. S. v. Babcock (1919), 39 S. Ct. 464, 250 U. S. 328, 63 L. Ed. 1011, reversing (1918) 53 Ct. Cl. 629.

This statute has no application to the judiciary and is no limitation on the jurisdiction of the court of claims in cases for horses lost in the military service. Cox v. U. S. (1906) 41 Ct. Cl. 86.

The Court of Claims, by virtue of its general jurisdiction of claims "founded upon any law of Congress," has jurisdiction of claims arising under this section, where (1) the facts are undisputed and the accounting officers misapply the law, or (2) they refuse to act on claims properly presented, or (3) payment by the treasury of their award is refused. Newcomber v. U. S. (1916) 51 Ct. Cl. 408.

See, also, section 250 of Title 28, Judicial Code and Judiciary.

8. Act March 2, 1895.—The Act of 1895 (repealed) did not provide for the payment of claims arising after its enactment, but did provide for a report of losses as ascertained by the accounting officers to the "Speaker of the House," and contemplated further action by Congress. The act did not confer jurisdiction on the Court of Claims; nor had it jurisdiction by virtue of that act under the general grant of jurisdiction of claims "founded upon any law of Congress." Harllee v. U. S. (1916) 51 Ct. Cl. 342.

§ 219. Same; extent of liability. Except as to such property as by law or regulation is required to be possessed and used by officers, enlisted men, and members of the Army Nurse Corps (female), respectively, the liability of the Government under sections 218 to 222 of this title shall be limited to damage to or loss of such sums of money or such articles of personal property as the Secretary of War shall decide or declare to be reasonable, useful, necessary, and prop-

er for officers, enlisted men, or members of the Army Nurse Corps (female), respectively, as the case may be, to have in their possession while in quarters, or in the field, engaged in the public service in the line of duty. (Mar. 3, 1885, c. 335, § 2; July 9, 1918, c. 143, subchapter VI, 40 Stat. 880; Mar. 4, 1921, c. 163, 41 Stat. 1437.)

Historical Note

This section is section 2 of the Act of March 3, 1885, c. 335, cited to the text, as added by Act July 9, 1918, c. 143, and as amended by Act March 4, 1921, c. 163. No change was made in the section by the amendatory Act of 1921.

Provisions somewhat similar to those of this section were contained in the single section of the Act of 1885, as originally enacted.

See, also, the historical note to section 218 of this title.

§ 220. Same; examination; payment; replacement. The Secretary of War is authorized and directed to examine into, ascertain, and determine the value of such property lost, destroyed, captured, or abandoned as specified in sections 218 and 219 of this title, or the amount of damage thereto, as the case may be; and the amount of such value or damage so ascertained and determined shall be paid by disbursing officers of the Army, or such property lost, destroyed, captured, or abandoned, or so damaged as to be unfit for service, may be replaced in kind from Government property on hand when the Secretary of War shall so direct. (Mar. 3, 1885, c. 335, § 3; July 9, 1918, c. 143, subchapter VI, 40 Stat. 881; Mar. 4, 1921, c. 163, 41 Stat. 1437.)

Historical Note

This is section 3 of the Act of March 3, 1885, c. 335, cited to the text as added to that act by Act July 9, 1918, c. 143, and amended by Act March 4, 1921, c. 163.

See the historical note to section 218 of this title.

§ 221. Same; final determination. The tender of replacement or of commutation or the determination made by the Secretary of War upon a claim presented, as provided for in section 220 of this title, shall constitute a final determination of any claim cognizable under sections 218 to 222 of this title, and such claim shall not thereafter be reopened or considered. (Mar. 3, 1885, c. 335, § 4; July 9, 1918, c. 143, subchapter VI, 40 Stat. 881; Mar. 4, 1921, c. 163, 41 Stat. 1437.)

Historical Note

This is section 4 of the Act of March 3, 1885, c. 335, cited to the text as added by Act July 9, 1918, c. 143, and amended by Act March 4, 1921, c. 163. No change in the section was made by the amendatory Act of 1921.

A provision that any claim presented and acted upon should be held as finally determined, and never be reopened or reconsidered, was contained in the single section of the Act of 1885 as originally enacted.

See, also, the historical note to section 218 of this title.

Notes of Decisions

See notes to section 218 of this title.

§ 222. Same; time for presentation. No claim arising under sections 218 to 222 of this title shall be considered unless made within two years from the time that it accrued, except that when a claim accrues in time of war, or when war intervenes within two years after its accrual, such claim may be presented within two years after

peace is established. (Mar. 3, 1885, c. 335, § 5; July 9, 1918, c. 143, subchapter VI, 40 Stat. 881; Mar. 4, 1921, c. 163, 41 Stat. 1437.)

Historical Note

This is section 5 of the Act of March 3, 1885, c. 335, cited to the text as added by Act July 9, 1918, c. 143, and amended by Act March 4, 1921, c. 163. No substantial change in this section was made by the amendatory Act of 1921.

A provision limiting the time for presenting claims to two years was contained in the single section of the Act of 1885 as originally enacted.

See, also, the historical note to section 218 of this title.

Notes of Decisions

See notes to section 218 of this title.

1. Failure to present claim in time.—Army regulation, in attempted compliance with section 75 of this title, requiring presentation of claims of officers for lost property, through War Department, cannot amend or affect requirement of this section that the claim be presented within two years, and presentation to the war department within two years does not save the claim. Newcomber v. U. S. (1916) 51 Ct. Cl. 408.

§ 223. **Settlement of claims for loss or damage to private property from operations, etc., of Army.** Settlement of claims of not to exceed $500 each in amount for damages to and loss of private property incident to the training, practice, operation, or maintenance of the Army that have accrued, or may accrue, from time to time, shall be made by the General Accounting Office, upon the approval and recommendation of the Secretary of War, where the amount of damages has been ascertained by the War Department, and payment thereof will be accepted by the owners of the property in full satisfaction of such damages. (June 30, 1922, c. 253, Title I, 42 Stat. 725; Mar. 2, 1923, c. 178, Title I, 42 Stat. 1386; June 7, 1924, c. 291, Title I, 43 Stat. 483; Feb. 12, 1925, c. 225, Title I, 43 Stat. 897.)

Historical Note

This is from the War Department appropriation act for the year 1926, cited in the credit to the text. Similar provisions were contained in prior acts.

A similar provision was also included in Act April 15, 1926, c. 146, Title I, 44 Stat. 259.

§ 224. **Settlement of claims for damages from operation of aircraft.** Not more than the amount specified in any appropriation Act may be expended for settlement of claims (not exceeding $250 each) for damages to persons and private property resulting from the operation of aircraft at home and abroad when each claim is substantiated by a survey report of a board of officers appointed by the commanding officer of the nearest aviation post and approved by the Chief of Air Service and the Secretary of War. (June 30, 1922, c. 253, Title I, 42 Stat. 737; Mar. 2, 1923, c. 178, Title I, 42 Stat. 1398; June 7, 1924, c. 291, Title I, 43 Stat. 492; Feb. 12, 1925, c. 225, Title I, 43 Stat. 907.)

Editorial comment.—The words "Not more than the amount specified in any appropriation Act" have been criticized as broader than the original text. See the historical note.

Historical Note

This is from the War Department appropriation act for the year 1926, cited in the credit to the text. Similar provisions were contained in prior acts.

Prior to its incorporation into the Code, this provision read as follows: "Not more than $4,000 may be expended for settlement of claims (not exceeding $250 each) for damages to persons and private property resulting from the operation of aircraft at home and abroad when each claim is substantiated by a survey report of a

board of officers appointed by the commanding officer of the nearest aviation post and approved by the Chief of Air Service and the Secretary of War."

The words "not more than $4,000" were evidently changed to "Not more than the amount specified in any appropriation Act" on the theory that the aggregate amount specified was in effect an appropriation, and might vary from year to year.

§ 225. Judgments of Court of Claims; payment. In all cases of final judgments by the Court of Claims, or, on appeal, by the Supreme Court, where the same are affirmed in favor of the claimant, the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the Court of Claims, and signed by the chief justice, or, in his absence, by the presiding judge of said court. (R. S. § 1089.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1863, c. 92, § 7, 12 Stat. 766.

Cross-References

By section 226 of this title the Secretary of the Treasury is required to certify to Congress for appropriation only such judgments as are not to be appealed, or such judgments as, having been reviewed, have been decided to be due and payable.

Provisions for deducting, from any judgment recovered or other claim duly allowed against the United States, the amount of any indebtedness of the plaintiff or claimant to the United States, are made by section 227 of this title.

The Secretary of the Treasury is required, at the commencement of each session of Congress, to report the amount of each claim allowed to the Speaker of the House of Representatives and the presiding officer of the Senate, by section 266 of Title 5, Executive Departments, and Government Officers and Employees.

Notes of Decisions

1. Claims within jurisdiction of court of claims.—The jurisdiction of the court of claims is restricted to money claims, and does not extend to land claims or for specific performance. U. S. v. Jones (Or. 1889) 9 S. Ct. 669, 131 U. S. 1, 33 L. Ed. 90.

2. Situs of claim.—While a debt due from the United States has no locality in the District of Columbia, yet when an appropriation has been made by Congress to pay a finding by the court of claims in favor of a claimant, and nothing remains to be done but the issuance by the Treasurer of the United States of a check to the claimant in payment of the claim, the fund has a locality in this District as between the Treasurer and the claimant, or one having an equitable lien on the fund created by contract with the claimant. Roberts v. Consaul (1905) 24 App. D. C. 551.

3. Object and effect of presenting certified copy of judgment.—The certified copy of a judgment of the court of claims on which a judgment creditor is paid at the Treasury bears no command; runs not against the property of the defendants; nor is the Secretary of the Treasury in any sense an officer of the court. It therefore contains none of the ingredients of a writ of execution. Brown v. U. S. (1870) 6 Ct. Cl. 171.

4. Power of Secretary to examine or revise judgment.—This statute applies to special appropriations made for the satisfaction of a particular judgment and the Secretary has no power whatever to go behind the judgment in his examination, nor is the right of appeal affected by section 71 of this title. U. S. v. Jones (Ct. Cl. 1886) 7 S. Ct. 283, 119 U. S. 477, 30 L. Ed. 440; Bonnafon's Case (1878) 14 Ct. Cl. 484.

5. Propriety of payment within ninety days after judgment, right of appeal having been waived.—If the right of appeal from judgments of the Court of Claims in the direct tax cases was waived by both parties by stipulations on record, it was held that no legal objection would exist to the payment by the Treasury Department of such claims prior to the expiration of the ninety days within which appeals must be taken. (1890) 20 Op. Atty. Gen. 547.

It was, however, deemed unwise for the Department of Justice to adopt any general rule giving such stipulations. Id.

6. Right of set-off.—The Treasury has authority to set off an indebtedness due from a claimant to the government against

a judgment recovered by him. Labadie v. U. S. (1898) 33 Ct. Cl. 476.

7. Appropriations from which claims payable.—It is the duty of the Secretary to pay out of special appropriations, if any there be, for the satisfaction of the particular judgment. U. S. v. Jones (Ct. Cl. 1886) 119 U. S. 477, 7 S. Ct. 283, 30 L. Ed. 440.

When there are legal liabilities on the part of the government, its creditors on that account cannot obtain payment until there is an appropriation therefor. If no direct appropriation for that purpose exists, they may bring action in the Court of Claims and if they obtain judgment they may have the same paid out of any money appropriated for the payment and satisfaction of private claims. Mitchell v. U. S. (1883) 18 Ct. Cl. 281, reversed on other grounds (1883) 109 U. S. 146, 3 S. Ct. 151.

§ 226. Same; certified by Secretary of the Treasury; interest. The Secretary of the Treasury shall certify to Congress for appropriation only such judgments of the Court of Claims as are not to be appealed, or such cases as shall have been decided by the Supreme Court upon review as provided in section 288 of Title 28 to be due and payable. And on judgments in favor of claimants which have been reviewed upon petition of the United States and affirmed by the Supreme Court, interest, at the rate of 4 per centum per annum, shall be allowed and paid from the date of filing the transcript of judgment in the Treasury Department up to and including the date of the mandate of affirmance by the Supreme Court: *Provided*, That in no case shall interest be allowed after the term of the Supreme Court at which said judgment was affirmed. (Sept. 30, 1890, c. 1126, § 1, 26 Stat. 537; Feb. 13, 1925, c. 229, § 3, 43 Stat. 939.)

Editorial comment.—It has been suggested that the duties prescribed by this section and section 227 of this title are now imposed on the General Accounting Office.

Historical Note

These provisions are from the deficiency appropriation act for the fiscal year 1890 cited in the credit to the text.

Upon incorporation into the Code, the language was changed slightly to conform to section 288 of Title 28, Judicial Code and Judiciary, providing for review by certiorari instead of appeal.

A provision for interest, where a judgment in favor of the claimant was appealed from and affirmed by the Supreme Court, at the rate of five per cent. per annum from the date of presentation of a certified copy of the judgment to the Secretary of the Treasury, made by R. S. § 1090, was superseded by this provision.

Cross-References

Final judgments and decrees in suits under section 41, paragraph 20, of Title 28, Judicial Code and Judiciary, bear interest from the date thereof to the date when an appropriation is made for the payment thereof, by section 765 of Title 28.

Notes of Decisions

1. Effect of Title 28, section 765.—R. S. § 1090 (superseded) was not affected by the concluding sentence of section 765 of Title 28, Judicial Code and Judiciary, which applies only to judgments of Circuit or District Courts. U. S. v. Barber (Ala. 1896) 74 F. 483, 20 C. C. A. 616; Pacific Coast Steamship Co. v. U. S. (1897) 33 Ct. Cl. 36. This latter point was expressly left undecided in Bunton v. U. S. (C. C. Pa. 1894) 62 F. 171.

Interest on the judgments of the court of claims is regulated by this section, and not by section 765 of Title 28, Judicial Code and Judiciary. Pacific Coast S. S. Co. v. U. S. (1897) 33 Ct. Cl. 36; Mosby v. U. S. (1897) 33 Ct. Cl. 58.

2. Effect of provision allowing interest.—A statute providing that the government shall pay interest on judgments is as binding as an agreement. Hobbs v. U. S. (1884) 19 Ct. Cl. 220.

The allowance of interest is not a matter of discretion with either court, but of legal right. State of New York v. U. S. (1896) 31 Ct. Cl. 276.

3. Judgments entitled to bear interest.—The liability assumed by the government does not include the payment of interest upon judgments recovered against collectors of customs, and such interest cannot be collected. White v. Arthur (C. C. N. Y. 1882) 10 F. 80.

Interest is not recoverable on a judgment in the court of claims, where the judgment was founded on a tort, and the case had been referred to the court under a special act (25 Stat. 1334), which contained no provision in relation to interest. Bunton v. U. S. (C. C. Pa. 1894) 62 F. 171.

If the defendants appeal from a judgment in favor of a claimant, and it be affirmed, he will be entitled to interest, notwithstanding that he himself appealed as to certain demands adversely decided. Hobbs v. U. S. (1884) 19 Ct. Cl. 220.

Where a judgment is affirmed so far as it is in favor of a claimant, and is reversed so far as it is adverse to him, he is entitled to have interest added by the Court of Claims on the former, and incorporated into the final judgment rendered under the mandate. State of New York v. U. S. (1896) 31 Ct. Cl. 276.

The statutes do not contemplate interest on a judgment reversed for an error of the trial court in giving the claimant too much. Mosby v. U. S. (1897) 33 Ct. Cl. 58.

Only such judgments of the Court of Claims as have been appealed from to the Supreme Court and affirmed by the latter are interest-bearing under that section, and they become interest-bearing from the date of their presentation in good faith for payment. (1887) 18 Op. Atty. Gen. 548.

Semble that a presentation made by a claimant who afterwards takes an appeal from the judgment is of no avail. Id.

Where a judgment by the Court of Claims in favor of a claimant was appealed by the United States to the Supreme Court, which court reversed the judgment, and directed the Court of Claims to enter judgment for a larger amount in favor of claimant, interest is not allowable on the latter sum. Id.

This section applies only where judgments bear no interest, and not to judgments providing for certain rate of interest after entry. Cherokee Nation v. U. S. (Ct. Cl. 1926) 46 S. Ct. 428, 270 U. S. 476, 70 L. Ed. 694.

4. Necessity of appropriation for payment of interest before such payments can be made.—Interest cannot lawfully be paid on a judgment of the Court of Claims against the United States where no appropriation is made for the payment of interest. (1892) 20 Op. Atty. Gen. 423.

5. Acceptance of payment as bar to recovery of interest.—A claimant who accepts, in payment of a judgment of the court of claims, a sum of money appropriated by congress for that purpose, by an act which declares that such sum shall be "in full satisfaction of the judgment," cannot thereafter maintain a suit to recover interest on such judgment. Pacific R. Co. v. U. S. (Ct. Cl. 1895) 15 S. Ct. 766, 158 U. S. 118, 39 L. Ed. 918.

6. Right to complain of mistake.—Mistake of Treasury Department and Congress in attempting to carry out judgment against United States by Cherokee Indians, increasing interest amounts which should have been paid under judgment, cannot be complained of by Cherokees. Cherokee Nation v. U. S. (Ct. Cl. 1926) 46 S. Ct. 428, 270 U. S. 476, 70 L. Ed. 694.

7. Decisions under former statutes.—As to R. S. § 1090, see U. S. v. Jones (Or. 1889) 9 S. Ct. 669, 131 U. S. 1, 33 L. Ed. 90.

§ 227. Offsets against judgments and claims against United States. When any final judgment recovered against the United States or other claim duly allowed by legal authority, shall be presented to the Secretary of the Treasury for payment, and the plaintiff or claimant therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Secretary to withhold payment of an amount of such judgment or claim equal to the debt thus due to the United States; and if such plaintiff or claimant assents to such set-off, and discharges his judgment or an amount thereof equal to said debt or claim, the Secretary shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff, or claimant, denies his indebtedness to the United States, or refuses to consent to the set-off, then the Secretary shall withhold payment of such further amount of such judgment, or claim, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Secretary to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment

with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Secretary with 6 per centum interest thereon for the time it has been withheld from the plaintiff. (Mar. 3, 1875, c. 149, 18 Stat. 481.)

Editorial comment.—See comment on section 226 of this title.

Historical Note

This was an act entitled "An act to provide for deducting any debt due the United States from any judgment recovered against the United States by such debtor."

Cross-References

See section 82 of Title 5, Executive Departments and Government Officers and Employees, relative to payment of public officers in arrears.

Notes of Decisions

1. Operation and effect in general.
2. Nature of remedy.
3. Right of accounting officers to re-examine judgment or set off debits litigated in the suit.
4. Failure to withhold money due contractor as affecting sureties on contractor's bond.
5. Amount to be withheld.
6. Debts and claims subject to set-off in general.
7. —— Set-off against moneys due states.
8. —— Set-off against salaries of federal judges.
9. Enjoining transfer of judgment.
10. Set-off against money taken from claimant's person while under arrest.
11. Interest only on balance found due.
12. Decisions prior to enactment of statute.

1. Operation and effect in general.—The authority to settle claims due to and from the United States by setting one off against the other, as provided in this section is thereby conferred exclusively on the secretary of the treasury, and not on any court. U. S. v. Griswold (D. C. Or. 1887) 30 F. 604. And see, also, Bonnafon's Cases (1878) 14 Ct. Cl. 484.

"The secretary must inform the judgment creditor of the amount of debt claimed against him, that he may make his election whether he consents to the set-off, accepts the balance, and will discharge his judgment, or denies the indebtedness and refuses to consent thereto. In the former case, it becomes a voluntary settlement upon the execution of the proper discharges contemplated by the Act [this section], and whether or not the claim set up by the secretary is a legal and valid debt which could be enforced at law becomes immaterial, since the debtor has waived his right to have it tested by proceedings in court, and he is estopped from setting up any further claim on his judgment. In the latter case, if the judgment creditor denies the indebtedness, and refuses to consent to the set-off, he may have the matter of his liability tried in a suit at common law." Bonnafon's Cases (1878) 14 Ct. Cl. 484.

This section does not confer upon the Secretary of the Treasury the power to review the decrees and judgments of established courts of justice. Id.

The right of set-off where the government is both debtor and creditor is established and provided for by section 82 of Title 5, Executive Departments and Government Officers and Employees, and by this act, but it exists independently of those enactments and is founded upon section 71 of this title. Taggart v. U. S. (1881) 17 Ct. Cl. 322.

It is the duty of the accounting officers in proper cases to set off the demand of the United States against the moneys due its debtor. George Howes & Co. v. U. S. (1889) 24 Ct. Cl. 170. See, also, Schooner Henry v. U. S. (1900) 35 Ct. Cl. 393.

The Treasury has authority to set off an indebtedness due from a claimant to the government against a judgment recovered by him. Labadie v. U. S. (1898) 33 Ct. Cl. 476.

The provisions of this section "deducting any debt due the United States from any judgment recovered against the United States by such debtor," did not apply to a proposed payment to the British Ministry of Shipping of the amount agreed upon in settlement of a claim against the War Department for transportation services arising out of the war with Germany under Act March 2, 1919, c. 94, § 3 (temporary). (1921) 32 Op. Atty. Gen. 588.

2. Nature of remedy.—This act does not create a lien on the money due to the claimant in favor of the government. U. S. v. Ennis (C. C. N. J. 1904) 132 F. 133.

Set-off differs from a lien, inasmuch as the former belongs exclusively to the remedy, and is merely a right to insist, if the party thinks proper to do so, when

sued by his creditor, on a counter demand, which can only be enforced through the medium of judicial proceedings; whilst the latter is, in effect, a substitute for a suit. (1834) 2 Op. Atty. Gen. 663.

3. Right of accounting officers to re-examine judgment or set off debits litigated in the suit.—This statute gives the accounting officers of the government no authority to re-examine the judgment, but provides a way of payment and satisfaction if the creditor shall at the time of the presentation of his judgment be a debtor of the United States for anything except what is included in the judgment, which is conclusive as to everything it embraces. U. S. v. Jones (Ct. Cl. 1886) 7 S. Ct. 283, 119 U. S. 477, 30 L. Ed. 440.

This act gave the accounting officers of the United States no authority to re-examine the judgment, but merely to offset it with another claim, and hence the treasury had no appellate jurisdiction, but the same was vested in the United States supreme court. Id.

4. Failure to withhold money due contractor as affecting sureties on contractor's bond.—The failure of the Treasury Department to withhold any part of a payment due to a government contractor on account of a claim of the United States against him for a prior breach of the contract, as authorized and required by this section, does not release the sureties on the contractor's bond from liability for such claim. U. S. v. Ennis (C. C. N. J. 1904) 132 F. 133.

5. Amount to be withheld.—If there be due the claimant any sum over and above that which is necessary to make good the debt, it ought not to be retained, but should be paid to him, or to his lawful assignee. (1844) 4 Op. Atty. Gen. 316.

6. Debts and claims subject to set-off in general.—Bonds deposited under sections 170 and 175 of Title 12, Banks and Banking, to secure the circulation of a national bank, are held by the government as a trustee, and the surplus of the proceeds thereof, after payment of the notes, cannot be set off by the government against an unsecured deposit of postal funds, but must be distributed ratably among all the creditors. Cook County Nat. Bank v. U. S. (Ill. 1882) 2 S. Ct. 561, 107 U. S. 445, 27 L. Ed. 537.

Where the government, as defendant, has sought to use an independent demand against the claimant by way of set-off, the Secretary of the Treasury cannot afterward use it to reduce a judgment recovered by the claimant; but where the government did not set up in the suit its independent cross-demand, the Secretary may assert it as a set-off against the judgment in the manner provided by this act. In the former case his action would be an unconstitutional assumption of judicial power; in the latter, constitutional and legal. Bonnafon v. U. S. (1878) 14 Ct. Cl. 484.

The United States had the right to retain moneys awarded, under the French treaty of 1831, to a firm of which one member was indebted to the government upon a bond for duties on goods imported for the firm, and to apply the same upon the bond. (1836) 3 Op. Atty. Gen. 163.

Where a disbursing agent of the government is in apparent default in respect to the moneys intrusted to him, and there be sufficient due him from the government to make good the deficiency, it is proper thus to satisfy the claim for such dues. (1844) 4 Op. Atty. Gen. 316.

Where the same person is contractor for two articles under separate contracts and fulfills one and fails in the other, and presents his account to the Treasury, for settlement, the accounting officer may set off, in the adjustment, such amount as may be due from him to the government upon his claim against it. (1845) 4 Op. Atty. Gen. 380.

Where a contractor for supplies for the navy, who was bound in separate contracts to furnish sugar and tea in stipulated quantities during a fiscal year, made default in respect to the sugar, but furnished the tea by causing it to be shipped to the naval storekeeper by a firm in New York, to whom the contractor indorsed over bills for the same made out in his name, payment of which had been refused on account of the contractor's defalcation on the contract for sugar, it was held that the sale of the tea was made by the firm to the contractor, and not to the government, and that the amount due therefor might be withheld and set off as against the damages sustained by the government on account of the nonfulfillment of the other contract. (1847) 4 Op. Atty. Gen. 551.

7. —— Set-off against moneys due states.—The balance of $95,588.63, due the United States from the territorial government of Florida, ought not to be set off in the extinguishment of the appropriation of $75,000 made by Congress by Act Feb. 27, 1851, c. 12, for reimbursing to the state of Florida moneys advanced for supplies and service of the local troops called into service during the year 1849. (1851) 5 Op. Atty. Gen. 455.

By compact between the United States and the state of Wisconsin, when the latter was admitted into the Union, it was agreed that the United States would pay to the state 5 per cent. of the net proceeds of the sale of public lands within the same, for the use of its schools, provided that certain liabilities of the territory of Wisconsin on account of lands granted by the United States for

canals therein should be paid and discharged by the state. Held, that the United States could not make a set-off of the 5 per cent. school fund to pay the canal debt, because the former was a special trust fund; but that the United States might retain the money in trust itself until the state discharged its obligation in the other respect to the United States. (1854) 6 Op. Atty. Gen. 732.

It was held that the amount claimed to be due from the state of Kansas to the United States on account of the direct tax should be retained out of the amount appropriated for payment to that state by Act March 3, 1881 (21 Stat. 414, 428). (1881) 17 Op. Atty. Gen. 228.

The withholding the amount of the "2 and 3 per cent. funds" due the state of Mississippi, and crediting the state therewith on account of the direct tax, was held unwarranted by law, as no liability rested upon the state for the payment of such tax. (1884) 17 Op. Atty. Gen. 671.

The Secretary of the Treasury was held authorized under Act March 2, 1891 (26 Stat. 822), to repay to the state of Vermont the full amount of the direct tax collected under Act Aug. 5, 1861 (12 Stat. 292), notwithstanding the existence of an unadjusted claim of the United States for arms, accouterments, clothing, etc., overdrawn by that state during the Civil War, under the act of 1808 (R. S. § 1661, now superseded), a portion of which were afterwards sold by the state, and the proceeds covered into the Treasury, and against which the state had a counterclaim for uniforms, garrison and camp equipage, etc., furnished its own military organizations during that war. (1891) 20 Op. Atty. Gen. 134.

The act of March 3, 1875 (18 Stat. 455), directing the Secretary of War to credit to the respective states the sums charged against them for overdrawal of arms and the ordnance stores during the Civil War, upon a showing by such states of a faithful disposition thereof, and to refuse credit where such stores had been sold or otherwise misapplied, was without effect upon the question above considered. Id.

It was held to be the duty of the Secretary of the Treasury to withhold from the amount to be paid the state of Indiana, under Act March 2, 1891 (26 Stat. 822), providing for a refund of the direct taxes collected under Act Aug. 5, 1861 (12 Stat. 292), an amount equal to the indebtedness of that state to the United States arising from certain overpayments. (1892) 20 Op. Atty. Gen. 363.

8. —— **Set-off against salaries of federal judges.**—The salary of a federal judge should not be withheld as falling within this section to meet a judgment recovered against him as surety for a former government employé. (1893) 20 Op. Atty. Gen. 626.

9. **Enjoining transfer of judgment.**—A judgment against the United States can neither be enforced by process nor transferred so as to prevent the government from setting off against it any cross-demand against the judgment plaintiff, especially in view of this section, expressly requiring such set-off. Hence there is no necessity nor ground for the issuance of a preliminary injunction or restraining order by a court of equity, in a suit by the United States to set off cross judgments, to prevent the transfer of his judgment by the defendant. Teller v. U. S. (Colo. 1901) 113 F. 463, 51 C. C. A. 297.

10. **Set-off against money taken from claimant's person while under arrest.**—In a suit by one who has been convicted of obtaining money from postmasters on forged money orders to recover from the government money taken from his person by a post office inspector, the government can set off the amount of any moneys shown to have been fraudulently obtained from postmasters, though not identified with the money taken from the plaintiff's person. U. S. v. Harris (Ill. 1897) 77 F. 821, 23 C. C. A. 483.

11. **Interest only on balance found due.**—A claimant is entitled to no interest unless on settlement a balance is found to be due him, and then only upon the amount of the balance stated. Bonnafon's Cases (1878) 14 Ct. Cl. 484.

12. **Decisions prior to enactment of statute.**—(1823) 1 Op. Atty. Gen. 590; (1824) 1 Op. Atty. Gen. 700; (1858) 9 Op. Atty. Gen. 198; (1859) 9 Op. Atty. Gen. 401; (1868) 12 Op. Atty. Gen. 431.

§ 228. Payment of judgments against United States made on settlements by General Accounting Office. Hereafter in all cases of final judgments and awards rendered against the United States by the Court of Claims, and of final judgments rendered against the United States by the district courts of the United States, payment thereof under appropriations made by Congress shall be made on settlements by the General Accounting Office. (Feb. 18, 1904, c. 160, § 1, 33 Stat. 41; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This was a provision, following appropriations for payment of judgments of the Court of Claims, in the urgent deficiency appropriation act for the fiscal year 1904, cited in the credits to the text.

Upon its incorporation into the Code, a reference to the "circuit and district courts" was changed by the omission of the words "circuit and" because of the abolition of the circuit courts by Act March 3, 1911, c. 231, § 289, 36 Stat. 1167; and a reference to the auditor for the department or branch of the public service having jurisdiction over the subject-matter out of which the claims arose, was changed to refer to the General Accounting Office to conform to section 44 of this title.

§ 229. Private claims pending before Congress; taking of testimony. Any committee of either House of Congress before which any private claim against the United States may at any time be pending, being first thereto authorized by the House appointing them, may order testimony to be taken, and books and papers to be examined, and copies thereof, proved, before any standing master in chancery within the judicial district where such testimony or evidence is to be taken. Such master in chancery, upon receiving a copy of the order of such committee, signed by its chairman, setting forth the time and place when and where such examination is to be had, the questions to be investigated, and, so far as may be known to the committee, the names of the witnesses to be examined on the part of the United States, and the general nature of the books, papers, and documents to be proved, if known, shall proceed to give to such private parties reasonable notice of the time and place of such examination, unless such notice shall have been or shall be given by such committee or its chairman, or by the attorney or agent of the United States, or waived by such private party. And such master shall issue subpœnas for such witnesses as may have been named in the order of such committee, and such others as the agent or other representative of the United States hereinafter mentioned shall request. And he shall also issue subpœnas at the request of such private party, or parties, for such witnesses within such judicial district as they may desire: *Provided*, That the United States shall not be liable for the fees of any officer for serving any subpœna for any private party, nor for the fees of any witness on behalf of such party. Said committee may inform the district attorney of the United States for the district where the testimony is to be taken of the time, place, and object of such examination, and request his attendance in behalf of the Government in conducting such examination, in which case it shall be his duty to attend in person, or by an assistant employed by him, to conduct such examination on the part of the United States, or such committee may, at its option, appoint an agent or attorney, or one of its own members, for that purpose, as they may deem best; and in that event, if the committee shall not be unanimous, the minority of the committee may also appoint such agent or attorney or member of such committee to attend and take part in such examination. (Feb. 3, 1879, c. 40, § 1, 20 Stat. 278.)

Historical Note

This section and section 230 of this title were an act entitled "An act to provide for taking testimony, to be used before Congress, in cases of private claims against the United States."

The original text referred to "any

standing master in chancery of the circuit of the United States within the judicial district where such testimony or evidence is to be taken." The words "of the circuit of the United States" were probably omitted as inappropriate since the abolition of circuit courts by Act March 3, 1911, c. 231, § 289, 36 Stat. 1167.

Cross-References

See Equity Rule 68 (set out under section 723 of Title 28, Judicial Code and Judiciary), as to appointment of standing masters in chancery.

§ 230. Same; subpœna for taking testimony; compensation of officers and witnesses; return of depositions. It shall be the duty of the marshal of the United States for the district in which the testimony is to be taken to serve, or cause to be served, all subpœnas issued in behalf of the United States under this section and section 229 of this title, in the same manner as if issued by the district court for his district; and he shall, upon being first paid his fees therefor, serve any subpœnas that may be issued at the instance of such private party or parties. And the said master may, in his discretion, appoint any other person to serve any subpœna. Such master shall have full power to administer oaths to witnesses, and the same power to issue attachments to compel the attendance of witnesses and the production of books, papers and documents, as the district court of his district would have in a case pending before it; and it shall be his duty to report the conduct of contumacious witnesses before him to the House of Congress appointing such committee. The compensation of such master in chancery, and the fees of marshals and deputy marshals, and of any person appointed to serve papers, shall be the same as for like services in equity cases in the district court of the United States; and the compensation of witnesses shall be the same as for like attendance and travel of witnesses before such district courts; and all such fees and compensation of officers and witnesses on behalf of the United States, and other expenses of all investigations which may be had under the provisions of this section and section 229 of this title on the part of the United States, shall be paid out of the contingent fund of the branch of Congress appointing such committee. Said master, when the examination is concluded, shall attach together all the depositions and exhibits, and attach thereto his certificate setting forth or referring to the authority by which they were taken, any notices he may have given, the names of the witnesses for whom subpœnas or attachments were issued, the names of witnesses who attended, with the time of attendance and mileage and fees of each witness on behalf of the United States, which he may require to be shown by affidavit, his own fees, the fees of the marshal, his deputies or other persons serving papers, giving the items, and such other facts in relation to the circumstances connected with the taking of the depositions as he may deem material. He shall then seal up such depositions and papers securely, direct them to the chairman of such committee at Washington, stating briefly on the outside the nature of the contents, and place the same in the post office, paying the postage thereon; and said package shall be opened only in the presence of such committee. The chairman of any committee ordering testimony to be taken under this section and section 229 of this title shall, at least ten days before the time fixed for such examina-

tion, and within two days after the adoption of such order, cause a copy thereof to be directed and delivered to the Attorney General of the United States, or sent to him by mail at the Department of Justice, to enable him to give such instructions as he may deem best to the district attorney of the district where such testimony is to be taken, who may, and, if required by the Attorney General, shall, though not requested by the committee, appear for the United States in person or by assistant, and take such part in such examination as the Attorney General shall direct. (Feb. 3, 1879, c. 40, § 2, 20 Stat. 279; Mar. 3, 1911, c. 231, § 289, 36 Stat. 1167.)

Editorial comment.—It has been suggested that this is amended by section 578 of Title 28, Judicial Code and Judiciary.

Historical Note

See the historical note to section 229 of this title.

Upon its incorporation into the Code, references in this section to the circuit courts were evidently omitted or changed to refer to the district courts to conform to Act March 3, 1911, c. 231, §§ 289, 291, 36 Stat. 1167.

§ 231. Liability of persons making false claims. Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall do or commit any of the acts prohibited by any of the provisions of section 80 of Title 18, shall forfeit and pay to the United States the sum of $2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit. (R. S. § 3490.)

Editorial comment.—Section 80 of Title 18, Criminal Code and Criminal Procedure, does not cover all of the acts formerly prohibited by R. S. § 5438, to which the original text of this section referred. (See the historical note to this section.) Criminal Code, § 35 (sections 80 and 82 to 86 of Title 18) as amended, covers some acts not covered by R. S. § 5438. Perhaps this section should be made to follow substantially the language of R. S. § 5438, as follows:

"Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States," etc.

Historical Note

This section of the Revised Statutes was derived from Act March 2, 1863, c. 67, § 3, 12 Stat. 698.

Prior to its incorporation into the Code, it referred to any person doing any of the acts prohibited by R. S. § 5438. R. S. § 5438, prescribed the punishment for making, causing to be made, or presented any false or fraudulent claim against the United States, or conspiring to defraud the United States by such claim, or paying moneys on such claim, etc., or purchasing equipment from persons not having authority to sell the same. It was incorporated into the Criminal Code, in section 35 thereof, and was repealed by section 341 thereof. Criminal Code, § 35, as amended, is incorporated in sections 80 and 82 to 86 of Title 18, Criminal Code and Criminal Procedure.

Notes of Decisions

1. Object of the statute.
2. Nature and incidents of penal suit.
3. Elements of offense giving rise to forfeiture.
4. Persons liable to penalty.
5. What constitutes false claim or account.
6. Necessity of authority or consent of United States attorneys to bring suit.
7. Affidavit for arrest of defendent.
8. Evidence.
9. Direction of verdict.
10. Right of private prosecutor to control and direct action.

11. Right of prosecutor to copies of official papers.
12. Conclusiveness of adverse judgment on relator.
13. Appeal and review—Service of notices.
14. Limitations.
15. Priority of United States claim.

See, also, sections 80 and 82 to 86 of Title 18, Criminal Code and Criminal Procedure and notes thereunder.

1. Object of the statute.—In U. S. v. Griswold (D. C. Or. 1885) 24 F. 361, affirmed [C. C. 1887] 30 F. 762, Deady, J., speaking of this section, said: "The statute is a remedial one. It is intended to protect the treasury against the hungry and unscrupulous host that encompasses it on every side, and should be construed accordingly. It was passed upon the theory, based on experience as old as modern civilization, that one of the least expensive and most effective means of preventing frauds on the treasury is to make the perpetrators of them liable to actions by private persons acting, if you please, under the strong stimulus of personal ill will or the hope of gain. Prosecutions conducted by such means compare with the ordinary methods as the enterprising privateer does to the slow-going public vessel."

2. Nature and incidents of penal suit.—The right of the United States to sue for recovery of money obtained from it by means of a fraudulent claim is one existing at common law, and the remedy given by this act is cumulative, and not exclusive. Pooler v. U. S. (Me. 1904) 127 F. 519, 62 C. C. A. 307.

3. Elements of offense giving rise to forfeiture.—A forfeiture could not occur under R. S. § 5438 (sections 80 and 82 to 86 of Title 18, Criminal Code and Criminal Procedure) without the party incurring the same being guilty of both fraudulent intent and conduct, while a violation of the customs and navigation laws involving a forfeiture or penalty may, and often does, occur without fraudulent intent or willful negligence. U. S. v. Griswold (D. C. Or. 1885) 24 F. 361, affirmed (C. C. 1887) 30 F. 762.

4. Persons liable to penalty.—The word "person" does not include corporations. within the meaning of this section. U. S. v. Kansas Pac. Ry. Co. (D. C. Kan. 1877) Fed. Cas. No. 15,506.

A paymaster's clerk in the army or in the navy is a person "in the military or naval forces of the United States." In re Thomas (D. C. Miss. 1869) 23 Fed. Cas. No. 13,888; U. S. v. Bogart (D. C. N. Y. 1869) 3 Ben. 257, 24 Fed. Cas. No. 14,616. Hence he is not liable to an action under this section; and if sued for embezzlement, a judgment cannot be rendered against him for more than the actual damages. U. S. v. Bogart (D. C. N. Y. 1869) 3 Ben. 257, 24, Fed. Cas. No. 14,616.

Counsel retained to argue a cause pending in the court of claims is not within the purview of this and the following sections. U. S. v. Moore (D. C. 1879) 3 MacArthur, 226.

An officer who conspires with others to obtain money by false accounts is guilty of falsification, though he may be ignorant of the items of any particular account. U. S. v. Russell (D. C. Tex. 1884) 19 F. 591.

5. What constitutes false claim or account.—An account including items for services not actually rendered or moneys not actually paid is a false account. U. S. v. Russell (D. C. Tex. 1884) 19 F. 591.

In an action by the United States, where the simple question was whether the defendant had presented and received payment of claims for any services that had never in fact been rendered by any one, it was held that an instruction was correct and sufficiently favorable to the plaintiffs that "a fictitious claim against the government (for the purposes of this suit) may be defined to be a claim preferred against it for services said to have been rendered to it, or for supplies said to have been furnished to the government, no part of which services or supplies were in fact rendered or supplied." U. S. v. Shapleigh (Mo. 1893) 54 F. 126, 4 C. C. A. 237.

6. Necessity of authority or consent of United States attorneys to bring suit.—The action to recover a penalty or damages for making a false claim against the United States under this section and sections 232 to 235 of this title may be brought without the previous authority or consent of the district attorney; and under Civ. Code Or. § 7981, the complaint may be subscribed by the attorney of the person who brings it. U. S. v. Griswold (D. C. Or. 1877) Fed. Cas. No. 15,-266.

7. Affidavit for arrest of defendant.—The verified complaint in an action to recover a penalty and damages for making a false claim against the United States is a sufficient affidavit for the arrest of defendant. U. S. v. Griswold (D. C. Or. 1877) Fed. Cas. No. 15,266.

8. Evidence.—The government must prove its case beyond a reasonable doubt, and defendant may introduce evidence of good character, for the proceeding, while civil in form, is criminal in its nature. U. S. v. Shapleigh (Mo. 1893) 54 F. 126, 4 C. C. A. 237.

In an action by the United States under this section for the presentation of a claim, "knowing such claim to be false, fictitious, or fraudulent" in the language of R. S. sec. 5438 (sections 80 and 82 to 86 of Title 18, Criminal Code and Crimi-

nal Procedure) there can be no recovery merely on proof of the defendant's negligence or want of ordinary business prudence; it must be shown that he "was aware of such facts or circumstances as would have created the belief in the mind of an ordinarily intelligent and prudent person that the claims were in some respects false, fictitious, or fraudulent." U. S. v. Shapleigh (Mo. 1893) 54 F. 126, 4 C. C. A. 237; U. S. v. Griswold (D. C. Or. 1885) 24 F. 361, affirmed (C. C. 1887) 30 F. 762.

9. Direction of verdict.—In an action brought under this section it is the duty of the trial court to withdraw the case from the jury, and to direct them to return a verdict for the defendant on every alleged cause of action upon which the evidence is of such a character that the court in the exercise of a sound judicial discretion would be compelled to set aside a verdict returned in favor of the plaintiff. U. S. v. Shapleigh (Mo. 1893) 54 F. 126, 4 C. C. A. 237.

10. Right of private prosecutor to control and direct action.—In an action brought by an informer to recover damages and forfeitures for collecting false claims from the treasury, the person who sues represents the United States therein, and also in all suits and proceedings brought or taken in aid of an execution, or to enforce the judgment therein, and is entitled to control the same. Bush v. U. S. (C. C. Or. 1882) 13 F. 625.

Where a person has, pursuant to these sections, in the name of the United States, sued a party for defrauding the United States by making false claims, defraying all the expenses of the suit, and obtained judgment of $23,576 the secretary of the treasury cannot, under section 194 of this title authorizing him to compromise claims in favor of the United States, satisfy the judgment for $100, and thus confiscate such prosecutor's right to the costs and one-half said judgment, as provided by section 232 of this title. U. S. v. Griswold (C. C. Or. 1887) 30 F. 762.

An action brought by a private prosecutor under these sections is what was known at common law as a "popular" or qui tam action, and is under the sole and exclusive control of said prosecutor, subject to the restriction on his right to discontinue the same, contained in section 232 of this title, and his interest or share in any judgment obtained therein is his absolute private property, and the United States cannot compromise, remit, or release the same by pardon or otherwise. U. S. v. Griswold (D. C. Or. 1885) 24 F. 361, affirmed (C. C. 1887) 30 F. 762.

The Secretary of the Treasury has power under section 194 of this title, to compromise a judgment rendered in the name of the United States for damages and penalties under this section and sections 232 to 235 of this title, though the prosecution was instituted and prosecuted by an individual who thereby acquired an interest in the judgment. (1884) 18 Op. Atty. Gen. 72.

11. Right of prosecutor to copies of official papers.—An application for copies of papers on file in a Department, to be used by the applicant in a suit promoted by him under these sections, stands upon the same footing with a like application by a plaintiff in any other private suit. (1876) 15 Op. Atty. Gen. 562.

12. Conclusiveness of adverse judgment on relator.—Relator in a qui tam action founded on these sections is equally concluded by a judgment in the court of claims against the United States. U. S. v. Moore (D. C. 1879) 3 MacArthur, 226.

13. Appeal and review—Service of notices.—Upon a bill of review to correct a decree given in favor of the United State, the subpœna to appear an answer may be served on the district attorney. Bush v. U. S. (C. C. Or. 1882) 13 F. 625.

14. Limitations.—Time does not run against the sovereign government. U. S. v. City of Alexandria (C. C. Va. 1882) 19 F. 609.

Section 3 of Act March 2, 1863, c. 67 (incorporated in part in this section), to prevent and punish frauds on the government, contemplated two proceedings, one civil and the other criminal, of which the former was subject to the limitation prescribed by the seventh section of that act (section 235 of this title), and the latter to that prescribed by the thirty-second section of Act April 30, 1790, c. 9 (section 582 of Title 18, Criminal Code and Criminal Procedure). (1872) 14 Op. Atty. Gen. 54.

15. Priority of United States claim.—The provisions of section 191 of this title, relative to priority of payment of claims by the United States in certain cases, apply to a judgment obtained against a defendant in a qui tam action instituted in the name of the United States under this section and section 232 of this title. U. S. v. Griswold (C. C. Or. 1881) 8 F. 496.

§ 232. Same; suits. The several district courts of the United States, the supreme court of the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall, wheresoever such act may have been done or com-

mitted, have full power and jurisdiction to hear, try, and determine such suit. Such suit may be brought and carried on by any person, as well for himself as for the United States; the same shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or discontinued without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent. (R. S. § 3491.)

Historical Note

This section of the Revised Statutes was derived from Act March 2, 1863, c. 67, § 4, 12 Stat. 698.

Cross-References

Jurisdiction of suits for enforcement of penalties and forfeitures under any law of the United States is given to the district courts by section 41, paragraph 9 of Title 28, Judicial Code and Judiciary.

Notes of Decisions

See note under section 231 of this title.

1. **Control of the suit.**—An action brought by a private prosecutor under this section is subject to his control except as specially provided by the statute. U. S. v. Griswold (D. C. Or. 1877) 5 Sawy. 25, 26 Fed. Cas. No. 15,266.

Where an action is brought by a private prosecutor, in the name of the United States, pursuant to the above section. and judgment is obtained therein, the prosecutor has the right to institute and control all proper suits and proceedings in the name of the United States to enforce such judgment for their joint benefit; but if such further suit, for example a suit to set aside an alleged fraudulent conveyance by the judgment debtor, is instituted jointly by the United States district attorney and the original prosecutor, service of a subpœna to appear and answer a bill of review to set aside a decree rendered for the plaintiff in the latter suit is sufficient if made upon the district attorney. Bush v. U. S. (C. C. Or. 1882) 13 F. 625.

2. **Subscribing to complaint.**—Where a qui tam action is brought by a private prosecutor in the name of the United States, the attorney employed by him is to all intents and purposes the attorney of the United States, and a complaint subscribed by such attorney is a sufficient compliance with a statute requiring complaints to be subscribed by the plaintiff or his attorney. U. S. v. Griswold (D. C. Or. 1877) 5 Sawy. 25, 26 Fed. Cas. No. 15,266.

§ 233. Duty of district attorney as to such cases. It shall be the duty of the several district attorneys of the United States for the respective districts, for the District of Columbia, and for the several Territories, to be diligent in inquiring into any violation of the provisions of section 231 of this title by persons liable to such suit, and found within their respective districts or Territories, and to cause them to be proceeded against in due form of law for the recovery of such forfeiture and damages. And such person may be arrested and held to bail in such sum as the district judge may order, not exceeding the sum of $2,000, and twice the amount of the damages sworn to in the affidavit of the person bringing the suit. (R. S. § 3492.)

Historical Note

This section of the Revised Statutes was derived from Act March 2, 1863, c. 67, § 5, 12 Stat. 698.

Notes of Decisions

See notes under section 231 of this title.

1. **Affidavit of arrest.**—Where the complaint alleges all the facts necessary to authorize an arrest, and it is verified by the oath of the prosecutor, such complaint is an affidavit, and may be used in the case whenever an affidavit as to such facts is required. U. S. v. Griswold (D. C. Or. 1877) 5 Sawy. 25, 26 Fed. Cas. No. 15,266.

2. **Following state practice upon arrest.**—Where the defendant is arrested and held to bail under this section, subsequent

proceedings touching the arrest are governed by the law of the state in which the action is brought, pursuant to the requirements of section 724 of Title 28, Judicial Code and Judiciary, and in the absence of a state statute authorizing the discharge of a defendant in arrest, who is not charged in execution within a certain time after judgment, the court will adopt the common-law practice in such cases and discharge the defendant unless he is charged in execution within two terms next after the judgment was rendered, reckoning the term wherein the judgment was obtained as one. **U. S. v. Griswold** (D. C. Or. 1880) 11 F. 807.

A statute of a state requiring a plaintiff to give an undertaking for costs and damages before procuring an arrest, does not apply to a qui tam action in the name of the United States, pursuant to the above section, since general words in a statute do not include the government or affect its rights unless such purpose be clear and indisputable upon the face of the Act. U. S. v. Griswold (D. C. Or. 1877) 5 Sawy. 25, 26 Fed. Cas. No. 15,266.

§ 234. Rights of persons presenting such suits. The person bringing said suit and prosecuting it to final judgment shall be entitled to receive one-half the amount of such forfeiture, as well as one-half the amount of the damages he shall recover and collect; and the other half thereof shall belong to and be paid over to the United States; and such person shall be entitled to receive to his own use all costs the court may award against the defendant, to be allowed and taxed according to any provision of law or rule of court in force, or that shall be in force in suits between private parties in said court: *Provided,* That such person shall be liable for all costs incurred by himself in the case, and shall have no claim therefor on the United States. (R. S. § 3493.)

Historical Note

This section of the Revised Statutes was derived from Act March 2, 1863, c. 67, § 6, 12 Stat. 698.

Notes of Decisions

See notes under section 231 of this title.

1. Interest of private prosecutor.—A qui tam action based upon section 231 of this title, although in the name of the United States pursuant to the requirements of section 232 of this title, is under the exclusive control of the private prosecutor thereof, the interest of the latter in a judgment recovered against the defendant therein is his private property, and his share in such payment cannot be compromised away by the Secretary of the Treasury under section 194 of this title. U. S. v. Griswold (D. C. Or. 1885) 24 F. 361, affirmed (C. C. 1887) 30 F. 762, overruling, in effect (1884) 18 Op. Atty. Gen. 72.

§ 235. Limitation of suit. Every such suit shall be commenced within six years from the commission of the act, and not afterward. (R. S. § 3494.)

Historical Note

This section of the Revised Statutes was derived from Act March 2, 1863, c. 67, § 7, 12 Stat. 698.

Notes of Decisions

See notes under section 231 of this title.

Decisions Relating to Claims in General

1. In general
2. Nature and grounds of claim—In general.
3. —— Salaries.
4. —— Civil War claims.
5. —— Torts.
6. —— Claims by the United States.
7. Payment, settlement or release.
8. Interest.
9. Costs and expenses.
10. Attorney's fees.
11. Actions.

1. In general.—Payment under Act May 24, 1824, c. 144, "for relief of the assignees and legal representatives of John H. Piatt," might be made to the assignees to the amount of their assignment; and where the amount for which the claim was assigned was not fixed in the assign-

ment, it having been given for advances "made and to be made," the accounting officers must examine into and ascertain the amount actually due the assignees thereon. (1824) 1 Op. Atty. Gen. 692.

The ordnance and other stores belonging to the several states, taken or accepted by the government for use in the war with Spain, should not be returned in kind, but should be paid for at the price agreed upon, or in the absence of an agreement, what they were worth. (1899) 22 Op. Atty. Gen. 372.

Where proceedings on a claim by the government have been vexatious and oppressive and the suit repeatedly dismissed and again renewed, and where the defendant has been harassed by tedious and expensive litigation until he has been deprived of important testimony by the death of important witnesses, the President may unquestionably interfere and compel the officer of the government in charge of the suit to prepare for and proceed to trial without delay; but it is not in the power of the executive to afford other relief to the defendant, such as a dismissal of the suit. (1832) 2 Op. Atty. Gen. 507.

2. **Nature and grounds of claim—In general.**—When the United States become a party to what is called commercial paper they are bound in any court to whose jurisdiction they submit, by the same principles that govern individuals in their relation to such paper. The Floyd Acceptances (Ct. Cl. 1868) 7 Wall. 666, 19 L. Ed. 169.

"Whenever negotiable paper is found in the market purporting to bind the government, it must necessarily be by the signature of an officer of the government, and the purchaser of such paper, whether the first holder or another, must, at his peril, see that the officer had authority to bind the government." Such authority exists only when expressly conferred by statute. Id.

Where the accounting officers, in order to recover alleged overpayments to the plaintiff make corresponding deductions from Railroad Administration accounts, and the Railroad Administration charges said deductions to carriers other than the plaintiff, and the plaintiff does not account for them to the Railroad Administration, it can not recover. Southern Pacific Co. v. U. S. (1926) 62 Ct. Cl. 649.

Semble that the proprietors of land adjacent to Lake Huron, Mich., have no legal right to stone taken from the bed of that lake, in front of their property, by other persons, and delivered by the latter on the government works, the ownership of such bed being apparently in the state. Under the circumstances presented, the claim of such proprietors for the stone so taken and delivered may properly be resisted by the United States officer in charge of the works. (1881) 17 Op. Atty. Gen. 59.

The owners of an American vessel wrecked on the South Pacific Ocean, whose master paid the United States consul at Apia for clothing supplied the crew out of the wages due the crew, they having subsequently recovered judgment for their wages in a United States court, have no valid claim against the United States for the money paid by the consul. The remedy, if any, is against the consul and the sureties on his bond. (1887) 19 Op. Atty. Gen. 22.

The United States is not liable to its citizens for the consequences of the wrongs or shortcomings of its officers. Id.

Where blank transportation requests were delivered to an officer of the United States Army in such form as to require but the filling of the blanks and his signature to make them Government orders upon carriers for the transportation therein indicated, and where these blanks were issued fraudulently to persons not entitled to them, and railroad companies furnished transportation upon the orders, in the absence of negligence and bad faith on the part of the carriers, the United States is liable for the transportation thus furnished. (1900) 23 Op. Atty. Gen. 161.

3. —— **Salaries.**—The person appointed Secretary of the Treasury ad interim has a claim upon the government for the usual, or, if there be no usual, for a reasonable, compensation for his services in that capacity; but an appropriation is necessary. (1842) 4 Op. Atty. Gen. 122.

4. —— **Civil War claims.**—Where the facts show that the plaintiff claimant sold his cotton to the "Confederate States of America," he cannot recover therefor. Lincoln v. U. S. (1915) 50 Ct. Cl. 70.

Where the plaintiff claimant cannot trace the proceeds of the sale of cotton taken from him into the United States treasury, he cannot recover therefor. Id.

5. —— **Torts.**—The United States is not liable for the tortious acts of its agents or officers. Thierman v. U. S. (1915) 51 Ct. Cl. 35.

6. —— **Claims by the United States.**—Where the United States sold ships to bankrupt to be paid for in installments, retaining title and the right to retake for default, and after defaults the parties negotiated for a change in the contract under which bankrupt was to pay for its use of the vessels, but the modification was not effected and the government retook possession under the terms of the original contract, it was held that it had no claim against the estate for hire of the vessels, based on the tentative agreement, which was never consummated. In re Atlantic, etc., Steamship Co. (D. C. Md. 1923) 289 F. 145, affirmed (C. C. A. 1925) 3 F.(2d) 438.

7. **Payment, settlement or release.**—Accepted award based on canceled government contract for war supplies has been held not bar to counterclaim for balance due on note given pursuant to another contract. Towar Cotton Mills v. U. S. (Ct. Cl. 1926) 46 S. Ct. 211, 270 U. S. 375, 70 L. Ed. 639.

Award by government, based on canceled contract, was held properly credited on amount due government as of its date, rather than date of cancellation of contract. Id.

Parties having claims against the United States which are disputed by the officers authorized to adjust the same, may compromise the claim, and may accept payment in a different medium from that promised, or may accept a smaller sum than that claimed; and where it appears that the claimant voluntarily entered into a compromise and accepted payment in full in a different medium from that promised, or accepted a smaller sum than that claimed and executed a discharge in full for the whole claim, or voluntarily surrendered to the proper officer the evidences of the claim for cancellation, he cannot subsequently sue the United States and recover in the Court of Claims for any part of the claim voluntarily relinquished in the compromise. Savage's Case (1875) 11 Ct. Cl. 215, citing Sweeny v. U. S. (Ct. Cl. 1873) 17 Wall. 75, 21 L. Ed. 575; U. S. v. Child (Ct. Cl. 1871) 12 Wall. 232, 20 L. Ed. 360; U. S. v. Justice (Ct. Cl. 1872) 14 Wall. 535, 20 L. Ed. 753.

Where the release executed by a contractor suffering damage from acts of the United States reserved in express language any right of action the plaintiff might have for claims not within the jurisdiction of the department making the contract, the release would not include claims for unliquidated damages over which departments have no authority. Peirce v. U. S. (1915) 50 Ct. Cl. 371.

Where plaintiff's contract has been terminated, and settlement contract entered into by it with government, and after payment in full under terms of said settlement contract, plaintiff signs a release to "remise, release, and forever discharge the government of and from all manner of debts, dues, sums of money, accounts, claims, and demands due, in law or in equity, under or by reason of, or arising out of, said original contract," plaintiff cannot thereafter recover on any unsettled claim growing out of said original contract. C. R. Wilson Body Co. v. U. S. (1924) 59 Ct. Cl. 611.

Where bill for transportation of government property is presented by railroad to disbursing officer, who refuses to pay it, and bill is restated by railroad as class D, and compensation is received by it at that rating without protest or objection, railroad cannot recover any additional compensation. Reading Co. v. U. S. (1925) 60 Ct. Cl. 131, affirmed U. S. v. Reading Co. (1926) 46 S. Ct. 267, 270 U. S. 320, 70 L. Ed. ——.

Where plaintiff's contract with United States to manufacture and deliver certain articles is canceled by government, and plaintiff files claim with War Department Claims Board for raw materials for said contract on hand at time of cancellation, and receives award therefor, and signs receipt "in full adjustment, payment, and discharge of said agreement," said receipt is not bar to recovery on another claim, filed with another army board, for compensation for articles manufactured, delivered, and accepted under said contract. Gem Hammock & Fly Net Co. v. U. S. (1925) 60 Ct. Cl. 262.

Where settlement by accounting officer is based on a fare applicable via "a usually traveled route for military traffic," as authorized by so-called military arrangements, plaintiff cannot recover on basis of fare via another route similarly authorized. Baltimore & O. R. Co. v. U. S. (1925) 60 Ct. Cl. 359, affirmed U. S. v. Baltimore & O. R. Co. (1926) 46 S. Ct. 267, 270 U. S. 320, 70 L. Ed. 606.

Where bills are reduced by disbursing officer to adjust them to basis of 150 pounds of baggage per man without objection by railroad company, company cannot recover amount deducted. Louisville & N. R. R. Co. v. U. S. (1925) 60 Ct. Cl. 636.

Where bills are paid by disbursing officer as presented, and auditor makes deductions from bills of Railroad Administration on account of overpayments for alleged free baggage, company may recover such deductions, if they have been refunded to Railroad Administration. Id.

Where deductions are made by auditor in direct settlement on account of claim of free baggage, and payment is received without objection, company may recover such deductions. Id.

Where there is controverted question as to whether improvements on land belong to plaintiff or to owner of land, and owner brings suit against government for taking said land and improvements, including improvements claimed by plaintiff, and recovers judgment against United States in Court of Claims, and in Supreme Court on appeal, which is paid by government, while plaintiff stands by and asserts no title to said improvements, he is estopped to recover compensation from government for said improvements. Joo v. U. S. (1925) 60 Ct. Cl. 850.

Where improper combinations of rates are applied by government officers, and payment is received by plaintiffs under protest, plaintiffs may recover. El Paso & S. W. Co. v. U. S. (1925) 60 Ct. Cl. 978.

Payment of bills in amounts at which they were restated at instance of government disbursing officer, received under

protest, does not defeat plaintiff's right to proper compensation. Panhandle & S. F. Ry. Co. v. U. S. (1925) 60 Ct. Cl. 999.

In order to be effective a protest or objection against a payment by the United States for services rendered must be made when the bill was presented or payment was accepted. St. Louis Southwestern Ry. Co. v. U. S. (1926) 62 Ct. Cl. 73.

An application by the sureties on a bond given to the United States under Guano Island Act Aug. 18, 1856, c. 164 (chapter 8 of Title 48, Territories and Insular Possessions) for release from their obligation, was held not to present grounds for action by the President. (1864) 11 Op. Atty. Gen. 30.

The Secretary of the Treasury was held to have no discretion to pass upon the question whether an amount appropriated by Act July 1, 1898, c. 546, § 1, 30 Stat. 613, for the payment to a certain individual, or any portion thereof, ought to be paid; said provision being mandatory. (1899) 22 Op. Atty. Gen. 295.

8. Interest.—In an action by the United States for use and occupation or for mesne profits, where the recovery is of a sum in the nature of rent, interest is allowed on each annual sum from the end of the year. (1898) 22 Op. Atty. Gen. 172.

9. Costs and expenses.—While no costs are recoverable against the United States, a court of bankruptcy, as a court of equity, may charge the actual expense of litigation on a claim recoverable by the United States. In re Triangle S. S. Co. (C. C. A. N. Y. 1924) 3 F.(2d) 894, certiorari denied U. S. v. Davidson (1925) 45 S. Ct. 352, 267 U. S. 597, 69 L. Ed. 806.

Where a fund which the United States sought to charge with a trust in its favor was determined to be primarily security to L. upon a bail bond and judgment was obtained on the bail bond which L.'s estate was compelled to pay, his administrators were not entitled to reimbursement from the fund for their expenses in defending against proceedings to compel payment of the judgment, though the United States had impounded the fund, as the obligation to pay the judgment was absolute and not confined to a payment from such fund. Leary v. U. S. (Va. 1920) 40 S. Ct. 446, 253 U. S. 94, 64 L. Ed. 798, affirming (C. C. A. 1919) 257 F. 246.

L. was not entitled to reimbursement from the fund for his expenses in establishing and protecting the trust in his favor, on the theory that the rights of the United States were inferior to his, as this would impose on the owner of the fund charges of a kind that the United States never pays, and charges for protecting the fund not for, but against, the United States. Id.

10. Attorney's fees.—Act Cong. March 4, 1915, appropriating money to pay claims theretofore allowed by Court of Claims against United States was held valid in so far as it prohibited attorney for claimant from receiving over 20 per cent. of claims as fee. Capital Trust Co. v. Calhoun (1919) 39 S. Ct. 486, 250 U. S. 208, 63 L. Ed. 942, reversing (1917) 197 S. W. 944, 177 Ky. 518.

The United States had the same right to reject in toto a claim for property taken by federal forces in Civil War, or, when Act March 4, 1915, was passed, to attach conditions to its payment limiting amount any claim agent might receive, as it would have had if there had been no statute authorizing Court of Claims to report on matter. Calhoun v. Massie (Va. 1918) 97 S. E. 576, affirmed (1920) 40 S. Ct. 474, 253 U. S. 170, 64 L. Ed. 843.

And contract, executed in 1911, whereby claimant against United States for property taken by federal forces during Civil War agreed to pay attorney to collect claim 50 per cent. of amount collected, was held illegal and void under provision of Act March 4, 1915, that it should be unlawful for any agent to receive more than 20 per cent. of amount allowed. Id.

11. Actions.—Where an action was brought against a collector of internal revenue and the sureties on his official bond, and one of the sureties died after the commencement of the action, the state (California) statute providing that "if an action is pending against the decedent at the time of his death, the plaintiff must in like manner present his claim to the executor or administrator, for allowance or rejection, authenticated as required in other cases, and no recovery shall be had in the action unless proof be made of the presentations required," upon objection that the claim sued on had not been presented to the executor of the deceased surety, the court said that neither the statute of limitations nor laches will bar the government of the United States as to any claim for relief in a purely governmental matter, and that the state statute did not bar a recovery from the executor, notwithstanding that the entire estate had been distributed to other creditors. Pond v. U. S. (Cal. 1901) 111 F. 989, 49 C. C. A. 582.

CHAPTER 7.—BUREAU OF THE MINT, MINTS, AND ASSAY OFFICES

THE BUREAU OF THE MINT

Sec.
251. Bureau established; director.
252. Director; salary and expenses.
253. Same; powers; reports.
254. Acting in absence of director.

MINTS AND ASSAY OFFICES

261. Mints and assay offices enumerated.
262. Denver mint; coinage of gold and silver at.
263. Officers of mints.
264. Superintendents of certain mints to perform duties of treasurer.
265. Salaries of officers of coinage mints.
266. Appointment of assistants and employees.
267. Duties of coiner and melter and refiner performed by superintendent.
268. Salaries of assistants, clerks, and laborers employed in the mints.
269. Oath of office of officers, assistants, and clerks.
270. Bonds of officers, assistants, and clerks.
271. Acting in absence of superintendent or other officer.
272. General duties of superintendents of mints.
273. Duties of superintendents as to coin and bullion.
274. Duties as to melting and refining.
275. Duties as to coining.
276. Duties of engravers; dies for coins; new designs.
277. Duties of assayers.
278. Business of assay office at New York.
279. Officers at New York assay office; appointment.
280. Same; salaries.
281. Same; duties.
282. Salaries of assistants and employees.
283. Business of assay offices.
284. Appointment of officers at assay offices.
285. Powers and duties of assayers at assay offices.
286. Bond and oath of officers and clerks.
287. Laws relating to mints extended to assay offices.

THE BUREAU OF THE MINT

Section 251. Bureau established; director. There shall be established in the Treasury Department a Bureau of the Mint, embracing in its organization and under its control all mints for the manufacture of coin, and all assay offices for the stamping of bars, which have been, or which may be, authorized by law. The chief officer of the said bureau shall be denominated the Director of the Mint, and shall be under the general direction of the Secretary of the Treasury. He shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold his office for the term of five years, unless sooner removed by the President, upon reasons to be communicated by him to the Senate. (R. S. § 343.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 1, 17 Stat. 424.

Act June 20, 1874, c. 328, § 1, 18 Stat. 96, provided that all salaries under the Director of the Mint and at the various mints should be at the rates appropriated for in that act. The "rates appropriated for," mentioned in that provision, were practically superseded by subsequent appropriations for offices, clerks, and employees, and rates of compensation different from those fixed by this act and so far as they related to the office of the Director by the Classification Act of 1923. The appropriations for personal services in the office of the Director of the Mint, and for compensation of officers and employees of the various mints and assay offices, for the fiscal year 1927, were made by Act March 2, 1926, c. 43, Title I, 44 Stat. 148–150.

§ 252. Director; salary and expenses. There shall be allowed to the Director of the Mint an annual salary payable monthly, and ac-

tual necessary traveling expenses in visiting the different mints and assay offices, for which vouchers shall be rendered. (R. S. § 344.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 12, 17 Stat. 426.

A provision of the original text omitted here fixed the salary of the Director at $4,500. It was practically superseded by later appropriation acts, and was probably omitted as wholly superseded by the Classification Act of 1923 (chapter 13 of Title 5, Executive Departments and Government Officers and Employees).

Cross-References

See section 75 of Title 5, Executive Departments and Government Officers and Employees, fixing a maximum per diem allowance for traveling expenses.

§ 253. Same; powers; reports. The Director of the Mint shall have the general supervision of all mints and assay offices, and shall make an annual report to the Secretary of the Treasury of their operations, at the close of each fiscal year, and from time to time such additional reports, setting forth the operations and condition of such institutions, as the Secretary of the Treasury shall require, and shall lay before him the annual estimates for their support. And the Secretary of the Treasury shall appoint the number of clerks, classified according to law, necessary to discharge the duties of said bureau. (R. S. § 345.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 2, 17 Stat. 424.

Cross-References

The printing and distribution of the reports of the Director of the Mint are provided for by section 273 of Title 44, Public Printing and Documents.

§ 254. Acting in absence of director. In case of the temporary absence of the Director of the Mint, the Secretary of the Treasury may designate some one to act in his place. (R. S. § 3502.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 9, 17 Stat. 425.

Cross-References

The portions of the original text of this section omitted here are incorporated in section 271 of this title.

MINTS AND ASSAY OFFICES

§ 261. Mints and assay offices enumerated. The different mints and assay offices shall be known as—

First. The mint of the United States at Philadelphia.
Second. The mint of the United States at San Francisco.
Third. The mint of the United States at New Orleans.
Fourth. The mint of the United States at Carson.
Fifth. The mint of the United States at Denver.
Sixth. The United States assay office at New York.
Seventh. The United States assay office at Boise City, Idaho.
Eighth. The United States assay office at Helena, Montana.
Ninth. The United States assay office at Deadwood, South Dakota.
Tenth. The United States assay office at Seattle, Washington.

Eleventh. The United States assay office at Salt Lake City, Utah. (R. S. § 3495; May 12, 1874, c. 168, § 1, 18 Stat. 45; June 20, 1874, c. 328, § 1, 18 Stat. 97; Feb. 1, 1881, c. 33, § 1, 21 Stat. 322; June 11, 1896, c. 420, § 1, 29 Stat. 414; May 21, 1898, c. 348, 30 Stat. 420; May 30, 1908, c. 223, 35 Stat. 474.)

Historical Note

This section, with the exception of the eighth to eleventh subdivisions, inclusive, is from R. S. § 3495, which was derived from Act Feb. 12, 1873, c. 131, § 66, 17 Stat. 435. The eighth subdivision of that section read: "The United States assay-office at Charlotte, N. C." That subdivision, and Act Feb. 1, 1881, c. 33, § 1, 21 Stat. 322, providing for an assay office at St. Louis, Mo., were probably omitted from the Code as superseded by later appropriation acts making no provision for assay offices at Charlotte or St. Louis. See Act March 2, 1926, c. 43, 44 Stat. 149, 150.

The eighth, tenth, and eleventh subdivisions are based, respectively, on Act May 12, 1874, c. 168, § 1, 18 Stat. 45, Act May 21, 1898, c. 348, 30 Stat. 420, and Act May 30, 1908, c. 223, 35 Stat. 474, providing for the establishment of assay offices at the places mentioned in those subdivisions. Further provisions of those acts, relating to the construction or rent of buildings, and the officers of the assay offices thereby established, and their salaries, were doubtless omitted as temporary or superseded by later appropriation acts.

The ninth subdivision is based on a provision of Act June 11, 1896, c. 420, § 1, 29 Stat. 414, making an appropriation for the establishment of an assay office at Deadwood, S. D. Act Feb. 19, 1897, c. 265, § 1, 29 Stat. 559, provided that such office should be conducted under the provisions of Act Feb. 12, 1873 (incorporated in this chapter and chapter 8 of this title).

The mint at New Orleans having been closed during the war of the rebellion, its reopening was provided for by Act June 20, 1874, c. 328, § 1, 18 Stat. 97, the assaying and stamping of bullion thereat was authorized by Act March 3, 1877, c. 102, § 1, 19 Stat. 307, and the supplying of said mint with silver bullion for coinage into standard silver dollars and all smaller denominations of silver was authorized by Act March 15, 1898, c. 68, § 1, 30 Stat. 296.

All laws and parts of laws in force in relation to the mints of the United States, and for the government of the officers and persons employed therein, were applicable to the mint at Denver by Act Feb. 20, 1895, c. 105, § 3, 28 Stat. 673.

Act March 2, 1895, c. 177, § 1, 28 Stat. 784, 786, directed the establishment of a refinery at the assay office at Helena, Mont., and provided that the charges for refining, etc., should be fixed by the Director of the Mint, with the approval of the Secretary of the Treasury, to equal but not exceed the expenses thereof, and that all provisions relating to refineries should apply to the parting and refining of bullion at the assay office at Helena.

The foregoing provisions were doubtless omitted as executed, unnecessary, or obsolete.

Cross-References

The refining and parting of bullion at the mints of the United States and the assay-office at New York are authorized by section 361 of this title.

The establishment of a mint at Manila, and the coinage of silver and minor coins for use in the Philippine Islands, are authorized, and the laws of the United States relating to mints and coinage, so far as applicable, are extended to the coinage of said Islands, by provisions of section 1141 et seq. of Title 48, Territories and Insular Possessions.

§ 262. Denver mint; coinage of gold and silver at. The coinage of gold and silver and minor coins shall be carried on at the mint of the United States at Denver, in the State of Colorado. (Feb. 20, 1895, c. 105, §§ 1, 3, 28 Stat. 673.)

Historical Note

Until the mint and assay office at Denver should become a coinage mint, in accordance with law, it was provided that the mint should be continued as an assay-office, that the business transacted at such mint should be continued therein, and that the appropriations already made should be applicable to such mint, by a provision in the legislative, executive, and judicial appropriation act for the fiscal year 1896, Act March 2, 1895, c. 177, § 1, 28 Stat. 784, 786, which was evidently omitted, as temporary and as superseded by the operation of the mint as a coinage mint under the provisions of this act.

The provision for continuing the mint as an assay-office was continued in successive appropriation acts for subsequent

years down to 1904, but was not repeated thereafter. Appropriations for new machinery, etc., for its equipment for coinage operations, were made by Act March 3, 1903, c. 1007, § 1, 32 Stat. 1109, and Act April 28, 1904, c. 1762, 33 Stat. 463, and provisions for the force necessary for the proper operation of the mint were made by Act March 18, 1904, c. 716, § 1, 33 Stat. 109.

§ 263. Officers of mints. The officers of each coinage mint shall be a superintendent and an assayer; and, for the mint at Philadelphia, an engraver; all to be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 3496; Feb. 20, 1895, c. 105, § 2, 28 Stat. 673; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Historical Note

This section is from R. S. § 3496, which was derived from Act Feb. 12, 1873, c. 131, § 3, 17 Stat. 424. That section referred to "each mint" instead of "each coinage mint," and provided for a melter and refiner and a coiner, as well as a superintendent and assayer. The word "coinage" was probably inserted because recent appropriation acts do not provide for a superintendent except at coinage mints. The positions of coiner and melter and refiner were abolished by Act Aug. 23, 1912, c. 350, § 1, 37 Stat. 384.

The provisions of R. S. § 3496, were made applicable to the mint at Denver by Act Feb. 20, 1895, c. 105, § 2, 28 Stat. 673, which also provided that the compensation of the officers of the mint should be the same as those of the mint at Carson City, Nev. This last-mentioned provision was superseded by later appropriation acts specifying salaries of officers at the various mints. See Act Jan. 3, 1923, c. 22, 42 Stat. 1103.

Act March 18, 1904, c. 716, § 1, 33 Stat. 109, in making an appropriation for the Denver mint, provided for the appointment, when the Secretary of the Treasury should determine that it was necessary, of a superintendent, assayer, melter and refiner, and coiner, chief clerk, etc., at salaries therein specified. It was probably omitted as superseded by later appropriation acts, if not temporary and executed.

Cross-References

The Secretary of the Treasury is authorized, by section 430 of this title, to constitute any superintendent of mint or assayer of any assay-office a depositary, to receive gold coin and bullion on deposit for the purposes provided in sections 428 and 429 of this title.

Notes of Decisions

1. **Cashier.**—The cashier of the mint is not an officer thereof. U. S. v. Cole (C. C. Cal. 1904) 130 F. 620, 621; Scully v. U. S. (C. C. Nev. 1910) 193 F. 185.

§ 264. Superintendents of certain mints to perform duties of treasurer. The superintendents of the mints at Philadelphia, San Francisco, and Denver shall be, and perform the duties of, treasurers of said mints respectively. (R. S. § 3497; Feb. 20, 1895, c. 105, § 2, 28 Stat. 673; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Historical Note

This section is from R. S. § 3497, which was derived from Act Feb. 12, 1873, c. 131, § 65, 17 Stat. 435, and which referred to the mints at Philadelphia, San Francisco, and New Orleans. Its provisions were made applicable to the mint at Denver, by Act Feb. 20, 1895, c. 105, § 2, 28 Stat. 673.

The reference to the New Orleans mint was doubtless omitted as superseded by later appropriation acts making no provision for a superintendent at the New Orleans mint. See Act Jan. 3, 1923, c. 22, 42 Stat. 1103, cited to the text.

§ 265. Salaries of officers of coinage mints. The officers of the several coinage mints shall be entitled to salaries, to be paid monthly, in accordance with the provisions of section 676 of Title 5. (R. S. § 3498; June 20, 1874, c. 328, § 1, 18 Stat. 96; Apr. 4, 1924, c. 84, 43 Stat. 78; Jan. 22, 1925, c. 87, 43 Stat. 764.)

Editorial comment.—It is not apparent why this section should have been limited to "coinage mints."

Historical Note

R. S. § 3498 (Act Feb. 12, 1873, c. 131, § 12, 17 Stat. 426), cited to the text, provided that the officers of the several mints should be entitled to the salaries therein specified to be paid monthly. Act June 20, 1874, c. 328, § 1, also cited to the text, provided that all salaries at the various mints should be at the rates appropriated for in that act. Both of these sections were practically superseded by later appropriation acts. Section 676 of Title 5, Executive Departments and Government Officers and Employees, referred to in the present text, applied only to the fiscal year 1926, but its provisions have been repeated in later acts. See Act Jan. 26, 1927, c. 58, § 2, 44 Stat. 1051.

Notes of Decisions

1. **Salary fixed by appropriation.**—When Congress says that a sum appropriated shall be in full compensation of official services, the court cannot allow a greater sum fixed by a former statute. U. S. v. Fisher (Ct. Cl. 1883) 109 U. S. 143, 3 S. Ct. 154, 27 L. Ed. 885.

§ 266. Appointment of assistants and employees. All assistants and employees of the mints and assay officers of the United States shall be appointed by the Secretary of the Treasury. One of the clerks at each mint shall be designated "chief clerk." (R. S. § 3504; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384.)

Historical Note

The first sentence of this section is from Act Aug. 23, 1912, c. 350, § 1, cited to the text, which superseded provisions of R. S. § 3504, for appointments by the superintendent of each mint. The second sentence is a further provision of R. S. § 3504, which was derived from Act Feb. 12, 1873, c. 131, § 4, 17 Stat. 424.

Cross-References

Provisions of R. S. § 3504, omitted here, are contained in section 272 of this title; and further provisions of Act Aug. 23, 1912, c. 350, § 1, in section 267 of this title.

Notes of Decisions

1. **Construction and operation in general.**—The power of removal being vested in the superintendent at the time of the plaintiff's discharge by R. S. § 3504 (incorporated in part in this section), the lawful act of removal done prior to the passage of Act Aug. 23, 1912 (also incorporated in part herein), vesting the right of appointment in the Secretary of the Treasury, was not interfered with by said latter act, which took effect at the time of its passage. Costello v. U. S. (1916) 51 Ct. Cl. 257.

2. **Cashier.**—The appointment of a cashier of a mint by the superintendent under R. S. § 3504 (incorporated in part in this section) did not make him an officer of the United States. U. S. v. Cole (C. C. Cal. 1904) 130 F. 614, 616; Scully v. U. S. (C. C. Nev. 1910) 193 F. 185.

3. **Assistant melter and refiner.**—See U. S. v. Zabriskie (C. C. Nev. 1898) 87 F. 714.

§ 267. Duties of coiner and melter and refiner performed by superintendent. The duties and responsibilities formerly imposed by law on the coiner and the melter and refiner in each of the coinage mints and the assay office at New York shall devolve upon the superintendents of said institutions. (Aug. 23, 1912, c. 350, § 1, 37 Stat. 384.)

Historical Note

This was a provision of the legislative, executive and judicial appropriation act for the fiscal year 1912, cited to the text.

It was preceded in that act by a provision abolishing the position of coiner in each of the coinage mints, and the position of melter and refiner in the coinage mints and the assay office at New York.

A further provision of that section concerning the appointment of assistants and employees is incorporated in section 266 of this title.

§ 268. Salaries of assistants, clerks, and laborers employed in the mints. There shall be allowed to the assistants and clerks of the sev-

eral mints annual salaries in accordance with section 676 of Title 5, and the workmen employed therein shall be allowed such wages as may be customary and reasonable according to their respective stations and occupations, to be determined by the superintendent, and approved by the Director of the Mint. The salaries provided for in this section, and the wages of workmen permanently engaged, shall be payable in monthly installments. (R. S. § 3499; June 20, 1874, c. 328, § 1, 18 Stat. 96; Mar. 4, 1915, c. 141, § 6, 38 Stat. 1049.)

Historical Note

This section is R. S. § 3499 (Act Feb. 12, 1873, c. 131, § 12, 17 Stat. 426), changed to conform to section 676 of Title 5, Executive Departments and Government Officers and Employees. See the historical note to section 265 of this title concerning section 676 of Title 5, and Act June 20, 1874, c. 328, § 1, cited to the text.

Act March 4, 1915, c. 141, § 6, also cited to the text, provided that the officers and employees whose salaries were therein appropriated for were established and should continue from year to year to the extent they should be appropriated for by Congress. It was evidently regarded as superseded by section 676 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

1. **Pay for extra time.**—In the absence of agreement to pay a night watchman at a mint for time beyond eight hours per day, the government cannot be held responsible. Collins v. U. S. (1889) 24 Ct. Cl. 340.

§ 269. Oath of office of officers, assistants, and clerks. Every officer, assistant, and clerk appointed for any mint shall, before he enters upon the execution of his office, take an oath before some judge of the United States, or judge of some court of record of the State in which such mint is located, faithfully and diligently to perform the duties thereof; in addition to other official oaths prescribed by law, such oath, duly certified, shall be transmitted to the Secretary of the Treasury. The superintendent of each mint may require such oath from any of the employees of the mint. (R. S. § 3500.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 10, 17 Stat. 425.

Cross-References

Official oaths are prescribed by section 16 of Title 5, Executive Departments and Government Officers and Employees.

Officers and clerks of certain assay-offices are required by section 286 of this title to take the oath prescribed by section 16 of Title 5.

§ 270. Bonds of officers, assistants, and clerks. The superintendent and the assayer, before entering upon the execution of their respective offices, shall become bound to the United States, with one or more sureties, approved by the Secretary of the Treasury, in the sum of not less than $10,000 nor more than $50,000, with condition for the faithful and diligent performance of the duties of his office. Similar bonds may be required of the assistants and clerks, in such sums as the superintendent shall determine, with the approbation of the Director of the Mint; but the same shall not be construed to relieve the superintendent or other officers from liability to the United States for acts, omissions, or negligence of their subordinates or employees; and the Secretary of the Treasury may, at his discretion, increase the

bonds of the superintendents. (R. S. § 3501; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.*)

* It would seem that "Jan. 3, 1923, c. 22, 42 Stat. 1103" should be omitted.

Historical Note

This section is from R. S. § 3501, which was derived from Act Feb. 12, 1873, c. 131, § 11, 17 Stat. 425. That section referred to the melter and refiner and the coiner of each mint, as well as the superintendent and assayer, but those positions were abolished by Act Aug. 23, 1912, c. 350, § 1, 37 Stat. 384.

Notes of Decisions

See, also, notes to section 273 of this title.

1. Necessity of bond.—Under this section the cashier of the mint may be required to give a bond for the faithful performance of any duty intrusted to him. U. S. v. Cole (C. C. Cal. 1904) 130 F. 620.

The assayer, chief coiner, and treasurer of the mint cannot execute their offices legally unless they have given bonds for the faithful performance of their duties. (1793) 5 Op. Atty. Gen. 687.

2. Surplusage in bond.—A bond taken of the cashier describing him as cashier of the mint, conditioned that he will perform, execute, and discharge all the duties of his position according to the laws and the regulations of the department, will be assumed to have been taken under this section though the bond recites, and the complaint alleges, that the cashier was an officer of the mint; such allegation and recital being treated as surplusage, as may be done. U. S. v. Cole (C. C. Cal. 1904) 130 F. 620.

3. Liability on bond.—Under this section the bond of an assistant or clerk should be conditioned, like that of a superintendent, for "the faithful and diligent performance of the duties of his office," and is therefore valid, as a statutory bond, only so far as it is prospective in its character. U. S. v. Jones (C. C. Nev. 1896) 77 F. 717.

On a bond given by an assistant melter and refiner of a mint, conditioned that he "has faithfully performed" and "shall continue to faithfully perform" the duties of his office, recovery could not be had for a defalcation occurring prior to the execution of the bond, unless it was alleged that all or part of the funds unaccounted for were in his hands when the bond was given, or that legal regulations of the treasury department required him to give bond for past transactions. Id.

Under this section and section 274 of this title, post, a melter and refiner was liable on his official bond given "for the faithful and diligent performance" of his duties for the embezzlement of bullion by his assistant, although the theft was not committed through any fault of his own. U. S. v. Zabriskie (C. C. Nev. 1898) 87 F. 714. See, also, Bosbyshell v. U. S. (Pa. 1896) 23 C. C. A. 581, 77 F. 944, affirming (D. C. 1896) 73 F. 616, and writ of error dismissed (1899) 19 S. Ct. 875, 43 L. Ed. 1186; U. S. v. Bryan (C. C. Cal. 1897) 82 F. 290, affirmed (C. C. A. 1898) 90 F. 473, 53 L. R. A. 218. District Tp. v. Morton (1873) 37 Iowa, 550; Board of Education v. Jewell (1890) 44 Minn. 427, 46 N. W. 914, 20 A. S. R. 586; State v. Moore (1881) 74 Mo. 413; State v. Nevin (1885) 19 Nev. 162, 7 P. 650, 3 A. S. R. 873; New Providence Tp. v. McEachron (1869) 33 N. J. L. 340.

The liability of a superintendent of a mint under a bond conditioned that he would discharge his duties according to law and safely keep such moneys that came into his hands by virtue of his office is not to be determined by the principles of the law of bailment, but by the special contract evidenced by his bond, and it is no defense to a suit brought by the government upon such a bond that the moneys which were in custody had been destroyed by fire which occurred without his fault or negligence. Smythe v. U. S. (La. 1903) 23 S. Ct. 279, 188 U. S. 156, 47 L. Ed. 425.

Under this section the officer is virtually an insurer, and cannot be relieved even against an unavoidable loss except only when the loss occurs by an act of God or the public enemy and without any neglect on the part of the officer. U. S. v. Smythe (C. C. La. 1900) 120 F. 30, affirmed (1901) 107 F. 376, 46 C. C. A. 354, which was affirmed (1903) 23 S. Ct. 279, 188 U. S. 156, 47 L. Ed. 425.

The courts concur in establishing the rule, that a bond with an unqualified condition to account for and pay over public moneys enlarges the implied obligation of the receiving officer, and deprives him of defenses which are available to an ordinary bailee. The superintendent of a mint and his sureties are liable on his bond conditioned "for the faithful and diligent performance of the duties of his office," and in the event of loss by fire of public moneys, which his bond required him to keep safely and account for, the government will be entitled to recover whether the superintendent was in fault or not. In a suit against a superintendent of a mint for moneys lost by fire, no credits will be allowed him except such as appear to have been properly presented in the way of a claim to the accounting

officer of the treasury and appear "to have been disallowed in whole or in part." In such a case the plea of non damnificatus is not a good plea, as the bond is not one to indemnify against damage, but an affirmative covenant to do specific things. Smythe v. U. S. (C. C. A. La. 1901) 107 F. 376, affirmed (1903) 188 U. S. 156, 23 S. Ct. 279, 47 L. Ed. 425.

4. —— **Defense.**—No damage is not a good plea in defense to an action against a mint superintendent to recover on his official bond, conditioned "for the faithful discharge of his duties," for a loss by fire of moneys which his bond required him to keep safely, and pay over when required. Smythe v. U. S. (La. 1901) 107 F. 376, 46 C. C. A. 354, affirmed (1903) 23 S. Ct. 279, 188 U. S. 156, 47 L. Ed. 425.

5. —— **Measure of damages.**—The face value of treasury notes destroyed by fire while in the custody of the superintendent of the mint at New Orleans, and not the cost to the United States government of issuing new notes, is the measure of damages in an action on his official bond, conditioned for the safe-keeping of the moneys in his custody, to recover the amount of a shortage in his accounts caused by the destruction of such notes. Smythe v. U. S. (La. 1903) 23 S. Ct. 279, 188 U. S. 156, 47 L. Ed. 425, affirming (1901) 107 F. 376, 46 C. C. A. 354, which affirms (C. C. 1900) 120 F. 30.

§ 271. Acting in absence of superintendent or other officer. Whenever any officer of a mint or assay office shall be temporarily absent, on account of sickness or any other cause, it shall be lawful for the superintendent, with the consent of such officer, to appoint some person attached to the mint to act in the place of such officer during his absence; but all such appointments shall be forthwith reported to the Director of the Mint for his approval; and in all cases whatsoever the principal shall be responsible for the acts of his representative. In case of the temporary absence of the superintendent, the chief clerk shall act in his place. (R. S. § 3502.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 9, 17 Stat. 425.

Cross-References

The portion of the original text of this section omitted here is incorporated in section 254 of this title.

§ 272. General duties of superintendents of mints. The superintendent of each mint shall have the control thereof, the superintendence of the officers and persons employed therein, and the supervision of the business thereof, subject to the approval of the Director of the Mint. He shall make reports to the Director of the Mint at such times and according to such forms as the director may prescribe; which shall exhibit in detail, and under appropriate heads, the deposits of bullion, the amount of gold, silver, and minor coinage, and the amount of unparted, standard, and refined bars issued, and such other statistics and information as may be required. He shall keep and render, quarter yearly, to the Director of the Mint, for the purpose of adjustment according to such forms as may be prescribed by the Secretary of the Treasury, regular and faithful accounts of his transactions with the other officers of the mint and the depositors; and shall also render to him a monthly statement of the ordinary expenses of the mint or assay office under his charge. (R. S. §§ 3503, 3504.)

Historical Note

The first two sentences of this section are from R. S. § 3503, and the last sentence from section 3504. Both of those sections were derived from Act Feb. 12, 1873, c. 131, § 4, 17 Stat. 424.

See the historical note to section 266 of this title with respect to other provisions of R. S. § 3504.

Notes of Decisions

1. **Assistant melter and refiner.**—Under R. S. §§ 3503 and 3504 (this section and section 266 of this title), the assistant melter and refiner was appointed "upon recommendation and nomination in writing" by the melter and refiner subject to the approval of the director of the mint. U. S. v. Zabriskie (C. C. Nev. 1898) 87 F. 714.

2. **Liability for acts of subordinates.**—Under this section and section 273 of this title, the superintendent of the mint is not relieved from liability to the United States for acts, omissions, or negligence of his subordinates or employees, and the duties prescribed are as much a part of the condition of his bond as if the same were written therein. Smythe v. U. S. (La. 1901) 107 F. 376, 46 C. C. A. 354, affirming (C. C. 1900) 120 F. 30, and affirmed (1903) 23 S. Ct. 279, 188 U. S. 156, 47 L. Ed. 425.

§ 273. Duties of superintendents as to coin and bullion. The superintendent of each mint shall receive and safely keep, until legally withdrawn, all moneys or bullion which shall be for the use or the expenses of the mint. He shall receive all bullion brought to the mint for assay or coinage; shall be the keeper of all bullion or coin in the mint, except while the same is legally in the hands of other officers; and shall deliver all coins struck at the mint to the persons to whom they shall be legally payable. From the report of the assayer and the weight of the bullion, he shall compute the value of each deposit, and also the amount of the charges or deductions, if any, of all which he shall give a detailed memorandum to the depositor; and he shall also give at the same time, under his hand, a certificate of the net amount of the deposit, to be paid in coins or bars of the same species of bullion as that deposited, the correctness of which certificate shall be verified by the assayer, who shall countersign the same, and in all cases of transfer of coin or bullion, shall give and receive vouchers, stating the amount and character of such coin or bullion. (R. S. § 3506.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 4, 17 Stat. 424.

Notes of Decisions

See, also, notes to section 270 of this title.

1. **Liability of superintendent.**—Under this section and section 270 of this title, the superintendent and his sureties are liable for the loss of the money or bullion which he has received and receipted for when he took charge, and cannot produce, notwithstanding the fact that the vaults wherein such money or bullion was deposited had been sealed and not opened, nor money or bullion taken therefrom for the use of the mint, during his administration of the affairs of the mint. Obligors in such official bonds will be held strictly to their undertakings. They are substantially insurers. U. S. v. Prescott (Ill. 1845) 3 How. 578, 11 L. Ed. 734; U. S. v. Morgan (La. 1850) 11 How. 154, 13 L. Ed. 643; U. S. v. Bosbyshell (D. C. Pa. 1896) 73 F. 616, citing Boyden v. U. S. (1871) 13 Wall. 17, 20 L. Ed. 527.

A receipt given by a superintendent of a mint for a certain quantity of bullion, and his admissions in reports and accounts that he holds it, are at least prima facie evidence that it came into his possession; and, in an action against him to recover the value of bullion which he cannot produce, evidence which shows only that it might have been removed before he assumed office is not sufficient to require submission to the jury of the question whether he ever really received it. Bosbyshell v. U. S. (Pa. 1896) 77 F. 944, 23 C. C. A. 581, writ of error dismissed (1899) 19 S. Ct. 873, 43 L. Ed. 1186; Drexel v. U. S. (Pa. 1896) 77 F. 944, 23 C. C. A. 581, writ of error dismissed (1899) 19 S. Ct. 875, 43 L. Ed. 1186, affirming judgment (D. C. 1896) 73 F. 616.

A failure by the director of the mint to observe a rule prescribing that he shall, at the annual settlement, require the weighing and counting of all bullion in the mint, does not relieve a superintendent of a mint of his responsibility for bullion in his custody. Id.

When the superintendent of a mint, on assuming office, has receipted for a cer-

tain quantity of bullion, the same is thereafter in his custody, though it was not actually counted or weighed by him, but was locked and sealed up in a cage in the mint, under the certificate as to its amount of a mint inspector by whom it had previously been weighed and counted, upon the faith of which certificate the superintendent receipted for it, and though one of the keys of such cage, without which it could not be opened, is deposited in the bureau of the mints, at Washington, and the other is not actually delivered to the superintendent by his predecessor. Id.

The superintendent and his bondsmen are responsible for the loss of bullion which he has received and which he cannot produce, though it has been stolen or lost without his fault. Bosbyshell v. U. S. (Pa. 1896) 77 F. 944, 23 C. C. A. 581, affirming (D. C. 1896) 73 F. 616, and writ of error dismissed (1899) 19 S. Ct. 873, 43 L. Ed. 1186.

Whether the superintendent of a mint was at fault or not, he and his sureties are liable on his bond, "for the faithful discharge of his duties" for the loss by fire of public moneys which the law required him to keep safely, and pay over when required. Smythe v. U. S. (La. 1901) 107 F. 376, 46 C. C. A. 354, affirming (C. C. 1900) 120 F. 30, and affirmed (1903) 23 Sup. Ct. 279, 188 U. S. 156, 47 L. Ed. 425.

Under this section the superintendent of the mint is not relieved from liability to the United States for acts, omissions, or negligence of his subordinates or employés, and the duties prescribed are as much a part of the condition of his bond as if the same were written therein. Id.

Under this section, in an action on the bond of a superintendent of a mint to recover for his failure to account for and pay over public moneys received, it is no defense that such money consisted of treasury notes, and that they were accidentally burned, and the ashes and remnants were turned over to the United States, and therefore the government suffered no damage, since the defendant's obligation secured by his bond was not to indemnify the public against damage, but to "receive and safely keep until legally withdrawn all moneys," etc. U. S. v. Smythe (C. C. La. 1900) 120 F. 30, affirmed (1901) 107 F. 376, 46 C. C. A. 354, which was affirmed (1903) 23 S. Ct. 279, 188 U. S. 156, 47 L. Ed. 425.

Under this section the superintendent of a mint is liable to the United States on his bond for currency officially received by him as public moneys, but which was destroyed by fire in a vault through the negligence of a subordinate in leaving it upon a box containing inflammable materials. Id.

The obligation of a superintendent of a mint to "safely keep" all moneys and bullion, etc., until legally withdrawn implies an obligation to deliver to his successor, and he and his sureties are liable for any failure therein. U. S. v. Bosbyshell (D. C. Pa. 1896) 73 F. 616, affirmed (1896) 77 F. 944, 23 C. C. A. 581, writ of error dismissed (1899) 19 S. Ct. 873, 43 L. Ed. 1186.

2. **Liability of cashier.**—Where the combination of the lock of the vault of the mint was in possession of the superintendent, the chief clerk, and cashier of the mint, the cashier was not liable for theft of money therefrom by the chief clerk. U. S. v. Cole (C. C. Cal. 1904) 130 F. 614.

§ 274. Duties as to melting and refining. The superintendent of melting and refining department shall execute all the operations which are necessary in order to form ingots of standard silver or gold, and alloys for minor coinage, suitable for the superintendent of coining department, from the metals legally delivered to him for that purpose; and shall also execute all the operations which are necessary in order to form bars conformable in all respects to the law, from the gold and silver bullion delivered to him for that purpose. He shall keep a careful record of all transactions with the superintendent, noting the weight and character of the bullion, and shall be responsible for all bullion delivered to him until the same is returned to the superintendent and the proper vouchers obtained. (R. S. § 3508; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384.)

Editorial comment.—This section and other sections of this chapter and chapter 8 of this title, in which the words "melter and refiner" and "coiner" have been changed to "superintendent of melting and refining department," and "superintendent of coining department," respectively, have been criticized as based on an erroneous interpretation of the Act of Aug. 23, 1912, c. 350.

Historical Note

This section is from R. S. § 3508, which was derived from Act Feb. 12, 1873, c. 131, § 6, 17 Stat. 425.

That section referred to the melter and refiner, and the coiner, instead of the superintendents of the melting and refining, and the coining departments. The positions of melter and refiner and coiner were abolished by Act Aug. 23, 1912, c. 350, § 1, 37 Stat. 384, and their duties and responsibilities transferred to the superintendent of the mint or assay office. The same section provided for the appointment of assistants and employees of the mints and assay offices by the Secretary of the Treasury. Pursuant to that authority, superintendents of the melting and refining and coining departments were appointed who are said to perform the duties of the former melter and refiner and coiner. See Act Jan. 3, 1923, c. 22, 42 Stat. 1103, making appropriations for the superintendents of such departments.

Notes of Decisions

1. Liability on bond.—See U. S. v. Zabriskie (C. C. Nev. 1898) 87 F. 714; and notes under section 270 of this title.

§ 275. Duties as to coining. The superintendent of coining department shall execute all the operations which are necessary in order to form coins, conformable in all respects to the law, from the standard gold and silver ingots, and alloys for minor coinage, legally delivered to him for that purpose; and shall be responsible for all bullion delivered to him, until the same is returned to the superintendent and the proper vouchers obtained. (R. S. § 3509; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This section is from R. S. § 3509, which was derived from Act Feb. 12, 1873, c. 131, § 7, 17 Stat. 425.

Upon its incorporation into the Code, the word "coiner," which appeared in the original text, was changed to "superintendent of coining department." Concerning this change, see the historical note to section 274 of this title.

§ 276. Duties of engravers; dies for coins; new designs. The engraver shall prepare from the original dies already authorized all the working dies required for use in the coinage of the several mints, and, when new coins, emblems, devices, legends, or designs are authorized, shall, if required by the Director of the Mint, prepare the devices, models, hubs, or original dies for the same. The Director of the Mint shall have power, with the approval of the Secretary of the Treasury, to cause new designs or models of authorized emblems or devices to be prepared and adopted in the same manner as when new coins or devices are authorized. But no change in the design or die of any coin shall be made oftener than once in twenty-five years from and including the year of the first adoption of the design, model, die, or hub for the same coin: *Provided,* That no change be made in the diameter of any coin. But the Director of the Mint may nevertheless, with the approval of the Secretary of the Treasury, engage temporarily for this purpose the services of one or more artists, distinguished in their respective departments of art, who shall be paid for such service from the contingent appropriation for the mint at Philadelphia. (R. S. § 3510; Sept. 26, 1890, c. 944, 26 Stat. 484.)

Historical Note

This section is from R. S. § 3510 (Act Feb. 12, 1873, c. 131, § 8, 17 Stat. 425), as amended by Act Sept. 26, 1890, c. 944, 26 Stat. 484. The amendment consisted of the insertion of the second and third sentences, including the proviso, and a

provision, doubtless omitted from the Code as temporary that nothing therein should prevent the adoption of new designs or models for certain devices or emblems already authorized.

Act July 9, 1917, c. 36, 40 Stat. 242, authorizing certain slight modifications in the details of the designs of the current quarter dollar, was doubtless omitted from the Code as temporary and executed.

Notes of Decisions

1. **New designs for existing coins.**—This section prior to the amendment of 1890 did not authorize the Director of the Mint, with the approval of the Secretary of the Treasury, to accept and pay for new designs for existing coins. His authority thereunder, as regards the preparation of original dies, was limited to those intended for new coins. (1887) 19 Op. Atty. Gen. 16.

§ 277. **Duties of assayers.** The assayer shall assay all metals and bullion, whenever such assays are required in the operations of the mint; and shall make assays of coin or samples of bullion whenever required by the superintendent. (R. S. § 3507.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 5, 17 Stat. 425.

§ 278. **Business of assay office at New York.** The business of the United States assay office at New York shall be in all respects similar to that of the mints, except that bars only and not coin, shall be manufactured therein; and no metals shall be purchased for minor coinage. All bullion intended by the depositor to be converted into coins, of the United States, and silver bullion purchased for coinage, when assayed, parted, and refined, and its net value certified, shall be transferred to the mint at Philadelphia, under such directions as shall be made by the Secretary of the Treasury, at the expense of the contingent fund of the mint, and shall be there coined. And the Secretary of the Treasury is hereby authorized to make the necessary arrangements for the adjustment of the accounts upon such transfers between the respective offices. (R. S. § 3553.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 54, 17 Stat. 433.

Prior to its incorporation into the Code, the second sentence, after the word "coined," continued as follows: "and the proceeds returned to the assay-office." It is not apparent why this last-quoted provision was omitted.

§ 279. **Officers at New York assay office; appointment.** The officers of the assay office at New York shall be a superintendent and an assayer; each of whom shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 3554; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384.)

Historical Note

This section is from R. S. § 3554, which was derived from Act Feb. 12, 1873, c. 131, § 54, 17 Stat. 433.

Prior to its incorporation into the Code, it mentioned a melter and refiner as well as a superintendent and an assayer. The position of melter and refiner was abolished by Act Aug. 23, 1912, c. 350, § 1, 37 Stat. 384.

§ 280. **Same; salaries.** The officers of the assay office at New York shall be entitled to salaries in accordance with the provisions of section 676 of Title 5. (R. S. § 3556; Apr. 4, 1924, c. 84, 43 Stat. 78; Jan. 21, 1925, c. 87, 43 Stat. 764.)

Historical Note

This section is from R. S. § 3556 (Act Feb. 12, 1873, c. 131, § 56, 17 Stat. 433), changed to conform to section 676 of Title 5, Executive Departments and Government Officers and Employees, as to which see the historical note to section 265 of this title.

Act April 4, 1924, c. 84, 43 Stat. 78, cited to the text, appropriated $5,000 for the salary of the superintendent, and $3,000 for the salary of the assayer, partly superseding R. S. § 3556.

§ 281. Same; duties. The duties of the superintendent and the assayer of the assay office at New York shall correspond to those of superintendents and assayers of mints; and all the provisions of this title relating to mints and their officers, the duties and responsibilities of such officers, and others employed therein, the oaths to be taken, and the bonds and sureties to be given by them, shall extend, as far as the same may be applicable, to the assay office at New York, and to its officers, clerks, and employees. (R. S. § 3555; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.*)

* It would seem that "Jan. 3, 1923, c. 22, 42 Stat. 1103" should be omitted.

Historical Note

This section is R. S. § 3555, which was derived from Act Feb. 12, 1873, c. 131, § 55, 17 Stat. 433.

Upon its incorporation into the Code, a reference to the melter and refiner was omitted in view of Act Aug. 23, 1912, c. 350, § 1, 37 Stat. 384, abolishing that position.

§ 282. Salaries of assistants and employees. The compensation of assistants, clerks, and workmen in the assay office at New York shall be regulated in the same manner as is prescribed in regard to mints. (R. S. § 3557; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384.)

Historical Note

This section is from R. S. § 3557, which was derived from Act Feb. 12, 1873, c. 131, § 56, 17 Stat. 433, and which referred to the "appointment and compensation of assistants," etc. That section was superseded, so far as it related to appointments, by Act Aug. 23, 1912, c. 350, § 1, 37 Stat. 384 (section 266 of this title).

Cross-References

See section 268 of this title as to salaries of assistants, clerks, etc., of the mints.

§ 283. Business of assay offices. Except as otherwise provided in this chapter,* the business of the United States assay offices enumerated in section 261 of this title other than the assay office at New York, and that of any other assay offices which may be established, shall be confined to the receipt of gold and silver bullion, for melting and assaying. (R. S. § 3558; June 8, 1878, c. 170, 20 Stat. 102; Feb. 20, 1895, c. 105, § 1, 28 Stat. 673.)

* The words "Except as otherwise provided in this chapter," should probably be omitted, or the words "this chapter" changed to "section 430 of this title."

Historical Note

This section is from R. S. § 3558 (Act Feb. 12, 1873, c. 131, § 57, 17 Stat. 433), which, prior to its incorporation into the Code, read as follows: "The business of the mint of the United States at Denver, while conducted as an assay-office, that of the United States assay-office at Boise City, and that of any other assay-offices hereafter established, shall be confined to the receipt of gold and silver bullion, for melting and assaying, to be returned to depositors of the same, in bars, with the weight and fineness stamped thereon."

By Act Feb. 20, 1895, c. 105, § 1, cited in the credits to the text, provision for the coinage of gold and silver at the Denver mint was made, and by section 2, R.

S. §§ 3558–3561 were repealed so far as they related to that mint.

Act June 8, 1878, c. 170, 20 Stat. 102, also cited to the text, and incorporated in section 430 of this title, authorized assayers of assay-offices to be constituted assistant treasurers to receive gold coin and bullion on deposit for the purposes provided for in R. S. § 254 (section 429 of this title), and may be regarded as constituting an exception to the application of this section.

The words "to be returned to depositors of the same, in bars, with the weight and fineness stamped thereon," at the end of R. S. § 3558, seem to have been omitted as not in harmony with the present practice, and, in a sense, obsolete.

§ 284. Appointment of officers at assay offices. Except as otherwise provided by law, the officer of the assay offices embraced by section 283 of this title shall be an assayer in charge, who shall also perform the duties of melter, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive a salary in accordance with section 676 of Title 5. (R. S. § 3559; Feb. 20, 1895, c. 105, § 2, 28 Stat. 673; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384;* Jan. 22, 1925, c. 87, 43 Stat. 764.)

* "Aug. 23, 1912, c. 350, § 1, 37 Stat. 384;" should probably be omitted.

Historical Note

This section is from R. S. § 3559 (Act Feb. 12, 1873, c. 131, § 57, 17 Stat. 433), changed to conform to recent appropriation acts (see Act April 4, 1924, c. 84, 43 Stat. 78) and section 676 of Title 5, Executive Departments and Government Officers and Employees. Prior to its incorporation into the Code, section 3559 read as follows: "The officers of the assay-offices embraced by the preceding section shall be, when their respective services are required, an assayer and a melter; each of whom shall be appointed by the President, by and with the advice and consent of the Senate. Their salaries shall not exceed two thousand five hundred dollars a year each."

That section was repealed, so far as it related to the Denver mint, by Act Feb. 20, 1895, c. 105, § 2, cited to the text.

Act Aug. 23, 1912, c. 350, § 1, also cited to the text, abolished certain offices at the mints and the New York assay office, but does not seem to have affected this section, which relates to other assay offices.

§ 285. Powers and duties of assayers at assay offices. The assayer at each of the assay offices embraced by section 283 of this title shall have general charge of the office; and shall discharge the duties of disbursing agent for the expenses of the office under his charge. (R. S. § 3560; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384.)

Historical Note

This section is from R. S. § 3560 (Act Feb. 12, 1873, c. 131, §§ 57, 58, 17 Stat. 433).

That section was repealed so far as it related to the Denver mint, by Act Feb. 20, 1895, c. 105, § 2, 28 Stat. 673.

A provision therein for the employment of clerks, workmen, etc., by the assayer, under the direction of the Director of the Mint, was superseded by Act Aug. 23, 1912, c. 350, § 1, cited to the text (section 266 of this title).

Provisions concerning the salaries of clerks and wages of workmen and laborers were probably omitted as practically obsolete.

§ 286. Bond and oath of officers and clerks. Each officer and clerk appointed at either of the assay offices embraced by section 283 of this title shall, before entering upon the duties of his office, take an oath pursuant to the provisions of section 16 of Title 5, and shall give a bond to the United States, with one or more sureties, satisfactory to the Director of the Mint or to one of the judges of the supreme court of the State or Territory in which the office to which he is appointed is located, conditioned for the faithful performance of his duties. (R. S. § 3561; Feb. 18, 1875, c. 80, § 1, 18 Stat. 319; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249.)

Historical Note

This section is R. S. § 3561 (Act Feb. 12, 1873, c. 131, § 58, 17 Stat. 433) as amended by the other acts cited in the credits to the text.

Section 3561 was repealed, so far as it related to the Denver mint, by Act Feb. 20, 1895, c. 105, § 2, 28 Stat. 673.

Notes of Decisions

1. Form of bond.—See (1885) 18 Op. Atty. Gen. 274, holding that where the form of the bond is not prescribed by statute, its form may be determined by the officer whose duty it is to approve the same.

§ 287. **Laws relating to mints extended to assay offices.** All provisions of law for the regulation of mints, the government of officers and persons employed therein, and for the punishment of all offenses connected with mints or coinage, shall extend to all assay offices, as far as applicable. (R. S. § 3562.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 60, 17 Stat. 434.

CHAPTER 8.—COINS, COINAGE, AND CURRENCY

COINS AND COINAGE

Sec.
311. Policy of United States as to bimetallism.
312. International monetary conference commissioners.
313. International bimetallism.
314. Standard unit of value.
315. Gold coins of United States; weight.
316. Silver coins; weight.
317. Minor coins; weight and alloy.
318. Coins reduced in weight by abrasion.
319. Recoinage of gold coins.
320. Recoinage of uncurrent subsidiary silver coins.
321. Standard for gold and silver coins.
322. Coins prohibited.
323. Withdrawal of discontinued pieces and recoinage.
324. Inscriptions on coins.
325. Gold and silver bars.
326. Exchange of gold coins for gold bars.
327. Coining gold bullion; refusal of deposits.
328. Silver bullion for forming into bars.
329. Weighing and valuing bullion.
330. Assay of bullion.
331. Report of quality of bullion assayed.
332. Charges for converting bullion into coin and bars.
333. Same; standard gold bullion.
334. Verification of calculations of value of deposits; countersigning certificate.
335. Purchase of bullion for silver coinage; silver-profit fund.
336. Paying out silver coins for gold coins.
337. Exchange of subsidiary silver coin for lawful money.
338. Same.
339. Free transportation of silver coin.
340. Purchase of metal for minor coinage; profit fund.
341. Delivery of minor coins; redemption.
342. Cleaning, reissue, and recoinage of minor coins.
343. Transfer of bullion for formation into ingots.
344. Assay of ingots.
345. Delivery of ingots for coinage.
346. Standard of ingots used for coinage.
347. Preparation and stamping of bars for payment of deposits.
348. Deviations allowed in adjusting weights; gold coins.
349. Same; silver coins.
350. Same; minor coins.
351. Delivery of coins to superintendent and trial of pieces.
352. Sealing and transmitting trial pieces.
353. Disposals of clippings.
354. Yearly settlement of accounts.
355. Allowance for wastage.
356. Statement of balance sheet forwarded to Director of Mint.
357. Delivery of coin or bars to depositor.
358. Payment in money to depositors when value ascertained.
359. Payment for bullion in coin certificates.
360. Exchange of unparted bullion for fine bars.
361. Refining and parting bullion.
362. Same; exchange of unparted bullion for fine bars.
363. Assay commissioners.
364. Standard troy pound for regulation of coinage.

Sec.
365. Standard weights for mints and assay offices.
366. Destruction of obverse working dies.
367. Coinage for foreign countries.
368. National and other medals struck at Philadelphia Mint.
369. Money arising from charges and deductions covered into Treasury.
370. Transfer of bars to depositary; redemption of coin certificates or exchange for gold coins.
371. Decimal system established.
372. Value of foreign coins; how ascertained.
373. Recoinage of foreign coins.
374. Spanish and Mexican coins.
375. Same; transmission for recoinage.
376. Commemorative coins; laws applicable.
377. Gold $2.50 pieces and silver 50-cent pieces in commemoration of the one hundred and fiftieth anniversary of the signing of Declaration of Independence.
378. Silver 50-cent pieces in commemoration of one hundred and fiftieth anniversary of Battle of Bennington.
379. Laws applicable to coins authorized by sections 377 and 378.

CURRENCY

401. United States notes.
402. Limitation of amount of United States notes in circulation.
403. Issue of United States notes of small denominations and retirement of notes of higher denominations.
404. Further cancellation or retirement of legal-tender notes prohibited.
405. Silver certificates; issuance for silver dollars.
406. Denominations of silver certificates.
407. Redemption of fractional currency.
408. Gold reserve; redemption of United States notes and Treasury notes; reissue of redeemed notes.
409. Additional means for maintaining parity and strengthening gold reserve.
410. Treasury notes as legal tender; national-bank reserve fund.
411. Cancellation of Treasury notes on coinage of silver dollars and issue of silver certificates.
412. Redemption of Treasury notes with silver dollars.
413. Portraits of living persons on bonds or notes.
414. Names inscribed under portraits.
415. Engraving and printing notes, bonds, and other securities.
416. Machinery, materials, and employees and officers.
417. Expenses of issuing notes.
418. Distinctive paper for United States securities; contracts for.
419. Same; additional employees for mills.
420. Replacing mutilated notes.
421. Destruction of notes.
422. Same.
423. Laundering paper money.
424. Counterfeit notes to be marked.
425. State taxation.
426. Same; national banks not affected.
427. Rules and regulations.
428. Gold certificates in exchange for gold bullion.
429. Deposits of gold coin; gold certificates.
430. Same; receiving by superintendents of mints or assayers of assay offices.

Cross-References

Circulating notes; see Title 12, Banks and Banking.

See chapter 7 of Title 18, Criminal Code and Criminal Procedure, for provisions penalizing offenses respecting currency, coinage, etc.

COINS AND COINAGE

Historical Note

Act April 23, 1918, c. 63, §§ 1–4, 40 Stat. 535, 536, authorized the Secretary of the Treasury from time to time to melt or break up and sell as bullion not in excess of 350,000,000 standard silver dollars then or thereafter in the Treasury; and made provisions for sales of such bullion, the retirement of outstanding silver certificates, the purchase of silver and coinage of dollars to replace those broken up, etc.

Those sections were probably omitted from the Code as temporary.

Section 311. Policy of United States as to bimetallism. It is hereby declared to be the policy of the United States to continue the use of both gold and silver as standard money, and to coin both gold and silver into money of equal intrinsic and exchangeable value, such equality to be secured through international agreement, or by such safeguards of legislation as will insure the maintenance of the

parity in value of the coins of the two metals, and the equal power of every dollar at all times in the markets and in the payment of debts. And it is hereby further declared that the efforts of the Government should be steadily directed to the establishment of such a safe system of bimetallism as will maintain at all times the equal power of every dollar coined or issued by the United States, in the markets and in the payment of debts. (Nov. 1, 1893, c. 8, 28 Stat. 4.)

Historical Note

The provisions of the original text of this section omitted here repealed so much of Act July 14, 1890, c. 708, 26 Stat. 289, as directed the Secretary of the Treasury to purchase silver bullion from time to time and issue Treasury notes in payment therefor.

§ 312. International monetary conference commissioners. Whenever the President of the United States shall determine that the United States should be represented at any international conference called by the United States or any other country with a view to securing by international agreement a fixity of relative value between gold and silver as money by means of a common ratio, between these metals, with free mintage at such ratio, he may appoint five or more commissioners to such international conference; and for compensation of said commissioners, and for all reasonable expenses connected therewith, to be approved by the Secretary of State, including the proportion to be paid by the United States of the joint expenses of any such conference, the sum of $100,000, or so much thereof as may be necessary, is appropriated. (Mar. 3, 1897, c. 376, § 1, 29 Stat. 624.)

Historical Note

Section 2 of the act cited to the text authorized the President to call an international conference for the purposes specified in section 1, and to appoint special envoys to such of the nations of Europe as he might designate to seek an agreement for said purposes. Section 3 repealed previous provisions for appointment of delegates to such international conference similar to those of that act. These sections were probably omitted, as temporary merely.

§ 313. International bimetallism. The provisions of sections 146, 313, 314, 320, 406, 408, 411, 429, 455, and 751 of this title and sections 51, 101, and 178 of Title 12, Banks and Banking, are not intended to preclude the accomplishment of international bimetallism whenever conditions shall make it expedient and practicable to secure the same by concurrent action of the leading commercial nations of the world and at a ratio which shall insure permanence of relative value between gold and silver. (Mar. 14, 1900, c. 41, § 14, 31 Stat. 49.)

Cross-References

See the notes to section 314 of this title.

§ 314. Standard unit of value. The dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity. (R. S. § 3511; Mar. 14, 1900, c. 41, § 1, 31 Stat. 45.)

Historical Note

This was the first section of the Parity Act of March 14, 1900. It superseded a provision on the subject contained in R. S. § 3511.

Cross-References

For other sections of the Act of March 14, 1900, c. 41, see the sections enumerated in section 313 of this title; also section 542 of Title 12, Banks and Banking.

Notes of Decisions

1. **Payments in foreign money.**—Payment of deposits in foreign money is against public policy in view of this section. Webber v. American Union Bank (1926) 217 N. Y. S. 833, 128 Misc. Rep. 123, reversed on other grounds (1927) 222 N. Y. S. 359, 221 App. Div. 94.

2. **Indictment for robbery.**—An indictment for robbery describing the property as "dollars" authorized proof that money of the United States was taken. Thompson v. State (1921) 234 S. W. 406, 90 Tex. Cr. R. 125.

§ 315. Gold coins of United States; weight. The gold coins of the United States shall be a quarter-eagle, or $2.50 piece; a half-eagle, or $5 piece; an eagle, or $10 piece; and a double-eagle, or $20 piece. The standard weight of the quarter-eagle, or $2.50 piece, shall be sixty-four and a half grains; of the half-eagle, or $5 piece, one hundred and twenty-nine grains; of the eagle, or $10 piece, two hundred and fifty-eight grains; of the double-eagle, or $20 piece, five hundred and sixteen grains. (R. S. § 3511; Sept. 26, 1890, c. 945, § 1, 26 Stat. 485.)

Historical Note

This section is from R. S. § 3511, which was derived from Act Feb. 12, 1873, c. 131, § 14, 17 Stat. 426.

Provisions of that section for a one dollar piece and a three dollar piece were superseded by the discontinuance of the coinage of the one-dollar and three-dollar gold pieces by Act Sept. 26, 1890, c. 945, 26 Stat. 485; and provisions concerning the unit of value were superseded by a similar provision in Act March 14, 1900, c. 41, § 1, 31 Stat. 45 (section 314 of this title).

Notes of Decisions

1. **Judicial notice.**—The court will take judicial notice of the value of denominational coin of the United States. Ector v. State (1904) 48 S. E. 315, 120 Ga. 543.

2. **Contract—Damages.**—A contract to pay a sum in gold and silver coin is in legal effect a contract to deliver a certain weight of gold and silver of a certain fineness, to be ascertained by count, but damages for nonperformance may be recovered at law, assessed in lawful money of the United States. Butler v. Horwitz (Md. 1869) 7 Wall. 258, 260, 19 L. Ed. 149.

§ 316. Silver coins; weight. The silver coins of the United States shall be a dollar; a half-dollar, or fifty-cent piece; a quarter-dollar, or twenty-five-cent piece; and a dime, or ten-cent piece. The weight of the dollar shall be four hundred and twelve and one-half grains troy of standard silver, the weight of the half-dollar shall be one hundred and ninety-two and nine-tenths grains; the quarter-dollar and the dimes shall be, respectively, one-half and one-fifth of the weight of said half-dollar. (R. S. § 3513; Feb. 28, 1878, c. 20, § 1, 20 Stat. 25.)

Historical Note

The provisions of this section, with the exception of those relating to the dollar, are from R. S. § 3513, which was derived from Act Feb. 12, 1873, c. 131, § 15, 17 Stat. 427. That section also provided for a trade dollar, but all laws and parts of laws authorizing the coinage and issuance of trade dollars, were repealed by Act March 3, 1887, c. 396, § 3, 24 Stat. 635. The legal tender quality of such dollars had previously been abolished and the Secretary of the Treasury authorized to limit their coinage, by Res. July 22, 1876, No. 17, § 2, 19 Stat. 215.

The provisions concerning the dollar are based on Act Feb. 28, 1878, c. 20, § 1, cited to the text, providing for the coinage of such dollars of the weight specified in this section, on which should be the devices and superscriptions provided by Act Jan. 18, 1837, c. 3, 5 Stat. 137. The provision for the coinage of such dollars seems to have been omitted as superseded. See Act July 14, 1890, c. 708, §§ 1, 3, 26 Stat. 289; Act Nov. 1, 1893, c. 8, 28 Stat. 4; Act June 13, 1898, c. 448, § 34, 30 Stat. 467.

The coinage of silver twenty-cent pieces was authorized by Act March 3, 1875, c. 143, 18 Stat. 478. That act was repealed, and the coinage of such pieces prohibited, by Act May 2, 1878, c. 79, 20 Stat. 47.

Act March 14, 1900, c. 41, § 8, 31 Stat. 47, authorized the use of silver bullion purchased under Act July 14, 1890, c. 708, 26 Stat. 289, for the coinage of subsidiary silver coin, and required the cancellation of a corresponding amount of Treasury notes. A proviso limited the amount of subsidiary silver coin that should be outstanding at any time, but Act March 3, 1903, c. 1007, § 1, 32 Stat. 1109, provided that the authority so given might be exercised without limitation as to the amount of subsidiary coin outstanding. These provisions may have been omitted from the Code as obsolete.

Cross-References

A portion of Act Feb. 28, 1878, c. 20, § 1, 20 Stat. 25, omitted here, is incorporated in section 458 of this title.

Provisions for the issue of silver certificates are contained in sections 405 and 406 of this title.

Notes of Decisions

1. **Subsidiary coinage.**—The Director of the Mint was authorized, with the approval of the Secretary of the Treasury, to purchase bullion for subsidiary coinage, and this authority, under Act March 3, 1903 (omitted), was without limitation, express or implied. (1904) 25 Op. Atty. Gen. 170.

§ 317. Minor coins; weight and alloy. The minor coins of the United States shall be a five-cent piece, and a one-cent piece. The alloy for the five-cent pieces shall be of copper and nickel, to be composed of three-fourths copper and one-fourth nickel. The alloy of the one-cent piece shall be 95 per centum of copper and 5 per centum of tin and zinc, in such proportions as shall be determined by the Director of the Mint. The weight of the piece of 5 cents shall be seventy-seven and sixteen-hundredths grains troy, and of the one-cent piece, forty-eight grains. (R. S. § 3515; Sept. 26, 1890, c. 945, § 1, 26 Stat. 485.)

Historical Note

This section is from R. S. § 3515, which was derived from Act Feb. 12, 1873, c. 131, § 16, 17 Stat. 427.

That section contained provisions for a three-cent piece, but such provisions were superseded by Act Sept. 26, 1890, c. 945, 26 Stat. 485, prohibiting the coinage of the three cent nickel piece.

Notes of Decisions

1. **"Minor coins."**—The coins referred to in this section are alone known as "minor coins"; there is no such thing known to the law as "minor silver coinage." U. S. v. Bicksler (Dist. Col. 1881) 1 Mackey, 341.

2. **Counterfeiting.** — An indictment charging defendant with having possession of and uttering counterfeited coins resembling the silver coin coined at the mints commonly called a dollar charged an offense under section 277 of Title 18, Criminal Code and Criminal Procedure, without alleging that such coin was not one of the minor coins of the United States. Linningen v. Morgan (C. C. A. Kan. 1917) 241 F. 645.

3. **Proof of theft.**—Under this section and section 460 of this title, making minor coins legal tender at their nominal value for an amount not exceeding 25 cents in any one payment, proof that defendant stole 85 cents in United States 5-cent pieces was held to sustain an indictment for theft of 85 cents lawful current money of the United States. Black v. State (1904) 46 Tex. Cr. R. 107, 79 S. W. 311.

4. **Judicial notice.**—The court will take judicial notice that there is lawful current coin in the United States, representing the value of five cents, called a nickel, and that there is no money called a nickel other than such lawful coin. Barddell v. State (1906) 39 So. 975, 144 Ala. 54.

§ 318. Coins reduced in weight by abrasion. Any gold coins of the United States, if reduced in weight by natural abrasion not more than one-half of 1 per centum below the standard weight prescribed by law, after a circulation of twenty years, as shown by the date of coinage, and at a ratable proportion for any period less than twenty years, shall be received at their nominal value by the United States Treasury and its offices, under such regulations as the Secretary of the Treasury may prescribe for the protection of the Government against fraudulent abrasion or other practices. (R. S. § 3505.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 14, 17 Stat. 426.

Cross-References

See section 319 of this title, as to recoinage of gold coins reduced by natural abrasion.

Notes of Decisions

1. Silver coin.—This particularity in the limitation and allowance as to gold coin is not found in the case of the natural abrasion in silver coin, and so long as a genuine silver coin is worn only by natural abrasion, and is not appreciably diminished in weight, and retains the appearance of a coin duly issued from the mint, it is legal tender for its original value. Jersey City & B. R. Co. v. Morgan (N. J. 1895) 16 S. Ct. 276, 277, 160 U. S. 288, 40 L. Ed. 430.

§ 319. Recoinage of gold coins. Any gold coins in the Treasury of the United States, when reduced in weight by natural abrasion more than one-half of 1 per centum below the standard weight prescribed by law, shall be recoined. (R. S. § 3512.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 14, 17 Stat. 426.

Appropriations for recoinage of gold coins, as required by this section, are made each year. The provision for the fiscal year 1928, was by Act Jan. 26, 1927, c. 58, 44 Stat. 1031.

Cross-References

See section 318 of this title for provision as to receiving coins reduced by natural abrasion.

Provisions for the recoinage of worn and uncurrent subsidiary silver coin are made by section 320 of this title.

§ 320. Recoinage of uncurrent subsidiary silver coins. The Secretary of the Treasury shall cause all worn and uncurrent subsidiary silver coin of the United States received in the Treasury to be recoined, and to reimburse the Treasurer of the United States for the difference between the nominal or face value of such coin and the amount the same will produce in new coin from any moneys in the Treasury not otherwise appropriated. (Mar. 14, 1900, c. 41, § 9, 31 Stat. 48.)

§ 321. Standard for gold and silver coins. The standard for both gold and silver coins of the United States shall be such that of one thousand parts by weight nine hundred shall be of pure metal and one hundred of alloy. The alloy of the silver coins shall be of copper. The alloy of the gold coins shall be of copper, or of copper and silver; but the silver shall in no case exceed one-tenth of the whole alloy. (R. S. § 3514.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 13, 17 Stat. 426.

Notes of Decisions

1. **Judicial notice.**—A court will take judicial notice of the worth of a dollar. Reed v. State (1902) 92 N. W. 321, 66 Neb. 184.

Courts will take judicial notice that purchasing power of money since 1917 has been much less than it was in 1912, and that cost of labor, materials, and supplies necessary for operation and maintenance of street railways has greatly increased. Banton v. Belt Line Ry. Corporation (N. Y. 1925) 45 S. Ct. 534, 268 U. S. 413, 69 L. Ed. 1020.

§ 322. Coins prohibited. Except as otherwise authorized by Congress, no coins, either of gold, silver, or minor coinage, shall be issued from the Mint other than those of the denominations, standards, and weights set forth in this chapter. (R. S. § 3516.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 17, 17 Stat. 427.

§ 323. Withdrawal of discontinued pieces and recoinage. As fast as $3 gold pieces, $1 gold pieces, and 3-cent nickel pieces shall be paid into the Treasury of the United States they shall be withdrawn from circulation and be recoined into other denominations of coins. (Sept. 26, 1890, c. 945, § 2, 26 Stat. 485.)

Historical Note

The first section of the Act cited to the text prohibited the coinage of the pieces mentioned in this section. Section 3 repealed conflicting laws.

§ 324. Inscriptions on coins. Upon the coins there shall be the following devices and legends: Upon one side there shall be an impression emblematic of liberty, with an inscription of the word "Liberty" and the year of the coinage, and upon the reverse shall be the figure or representation of an eagle, with the inscriptions "United States of America" and "E Pluribus Unum," and a designation of the value of the coin; but on the dime, 5, and 1 cent piece, the figure of the eagle shall be omitted; and the motto "In God we trust" shall be inscribed on the denominations of gold and silver coins on which it was inscribed prior to May 18, 1908. (R. S. § 3517; Sept. 26, 1890, c. 945, § 1, 26 Stat. 485; May 18, 1908, c. 173, § 1, 35 Stat. 164.)

Editorial comment.—This section has been criticized on the ground that there is no authority for requiring the inscription "E Pluribus Unum" on the silver dollar. It is not clear that this section contains any such requirement. It would seem to apply to the coins to be coined, and not to those already coined, and there seems to be no permanent legislation now effective authorizing the coinage of silver dollars, unless the provision of Act Feb. 28, 1878, c. 20, § 1, 20 Stat. 25, omitted from the Code, is still in force. See the historical note to section 316 of this title.

Historical Note

This section, except the last clause relating to the motto "In God we trust," is from R. S. § 3517, which was derived from Act Feb. 12, 1873, c. 131, § 18, 17 Stat. 427. Provisions of that section with respect to the gold dollar, the three dollar piece, the three cent piece, and the silver trade dollar were superseded by the discontinuance of the coinage of those pieces by Act March 3, 1887, c. 396, § 3, 24 Stat. 635, and Act Sept. 26, 1890, c. 945, § 1, 26 Stat. 485.

The last clause is from the Act of May 18, 1908, c. 173, cited to the text. Section 2 of that act related to the time of its taking effect.

Act Feb. 28, 1878, c. 20, § 1, 20 Stat. 25, providing for the coinage of silver dollars, provided for the devices and superscriptions provided in Act Jan. 18, 1837, c.

3, 5 Stat. 137. Section 13 of the Act of 1837 provided that "upon one side of each of said coins there shall be an impression emblematic of liberty, with an inscription of the word LIBERTY, and the year of the coinage; and upon the reverse of each of the gold and silver coins, there shall be the figure or representation of an eagle, with the inscription United States of America, and a designation of the value of the coin."

§ 325. Gold and silver bars. At the option of the owner gold or silver may be cast into bars of fine metal, or of standard fineness, or unparted, as he may prefer, with a stamp upon the same designating the weight and fineness, and with such devices impressed thereon as may be deemed expedient to prevent fraudulent imitation, and no such bars shall be issued of a less weight than five ounces. (R. S. § 3518.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 19, 17 Stat. 427.

Cross-References

The exchange of gold bars for gold coin is authorized by section 326 of this title.

Provisions for the deposit of gold coin and bullion, and the issue therefor of certificates, are made by sections 428 and 429 of this title.

§ 326. Exchange of gold coins for gold bars. The superintendent of the coinage mints and of the United States assay office at New York may, with the approval of the Secretary of the Treasury, but not otherwise, receive United States gold coin from any holder thereof in sums of not less than $5,000, and pay and deliver in exchange therefor gold bars in value equaling such coin so received. The Secretary of the Treasury may make, in his discretion, such exchange without charge, or may impose a charge therefor. (May 26, 1882, c. 190, 22 Stat. 97; Mar. 3, 1891, c. 541, § 3, 26 Stat. 948; Mar. 3, 1901, c. 867, 31 Stat. 1446.)

Historical Note

This is from the Act of May 26, 1882, c. 190, cited to the text, as amended by the other acts cited. As originally enacted, it was as follows:

"That the superintendents of the coinage mints, and of the United States assay-office at New York, are hereby authorized to receive United States gold coin from any holder thereof in sums not less than five thousand dollars, and to pay and deliver in exchange therefor gold bars in value equalling such coin so received."

It was amended by Act March 3, 1891, c. 541, § 3, so as to require the approval of the Secretary of the Treasury before exchanges could be made, and to authorize the Secretary to make a charge for the exchange.

It was further amended by Act March 3, 1901, c. 867, to read substantially as set forth here.

Notes of Decisions

1. **Mandatory provision.**—The words "are hereby authorized," in this section as originally enacted were construed as mandatory upon the superintendents of the mints, etc. (1890) 19 Op. Atty. Gen. 575.

It was not discretionary with the Secretary of the Treasury to refuse such exchange, nor could he lawfully direct those officers so to do. Id.

2. **Charges.**—A charge for the preparation of the bars could not be exacted on an exchange thereof for coin under this section as originally enacted. (1890) 19 Op. Atty. Gen. 576, reaffirmed (1890) 19 Op. Atty. Gen. 594.

§ 327. Coining gold bullion; refusal of deposits. Any owner of gold bullion may deposit the same at any mint, to be formed into coin or bars for his benefit. It shall be lawful, however, to refuse any deposit of less value than $100, or any bullion so base as to be unsuitable for the operations of the Mint. In cases where gold and silver

are combined, if either metal be in such small proportion that it can not be separated advantageously, no allowance shall be made to the depositor for its value. (R. S. § 3519.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 20, 17 Stat. 427.

Cross-References

The deposit of gold coin and bullion, and the issuance of gold certificates therefor, is authorized by sections 428 and 429 of this title.

§ 328. Silver bullion for forming into bars. Any owner of silver bullion may deposit the same at any mint, to be formed into bars, and no deposit of silver for other coinage shall be received. Silver bullion contained in gold deposits, and separated therefrom, may, however, be paid for in silver coin, at such valuation as may be, from time to time, established by the Director of the Mint. (R. S. § 3520; Mar. 3, 1887, c. 396, § 3, 24 Stat. 635.)

Historical Note

This is from R. S. § 3520, which was derived from Act Feb. 12, 1873, c. 131, § 21, 17 Stat. 427. That section authorized the deposit of silver bullion to be formed into bars or trade dollars, but all laws authorizing the coinage and issue of trade dollars were repealed by Act March 3, 1887, c. 396, § 3, 24 Stat. 635.

§ 329. Weighing and valuing bullion. When bullion is deposited in any of the mints, it shall be weighed by the superintendent, and, when practicable, in the presence of the depositor, to whom a receipt shall be given, which shall state the description and weight of the bullion. When, however, the bullion is in such a state as to require melting, or the removal of base metals, before its value can be ascertained, the weight, after such operation, shall be considered as the true weight of the bullion deposited. The fitness of the bullion to be received shall be determined by the assayer, and the mode of melting by the superintendent of melting and refining department. (R. S. § 3521; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See comment on section 274 of this title.

Historical Note

This is from R. S. § 3521, which was derived from Act Feb. 12, 1873, c. 131, § 22, 17 Stat. 428.

Upon its incorporation into the Code the words "melter and refiner," appearing in the original text, were changed to "superintendent of melting and refining department." Concerning this change, see the historical note to section 274 of this title.

Notes of Decisions

1. **Assignment of bullion deposit.**—Under this section and section 357 of this title, a certificate showing the delivery of bullion to the mint for coinage is not a negotiable paper, and hence an assignee thereof has no greater right than the assignee of any other nonnegotiable paper; and where it appears that the bullion so deposited was the property of a third person, the assignee of the certificate could acquire no title by such assignment, no matter how much he gave for it, or how honestly and innocently he acted. Hegeman v. McCall (Pa. 1855) 1 Phila. 529.

§ 330. Assay of bullion. From every parcel of bullion deposited for coinage or bars, the superintendent shall deliver to the assayer a sufficient portion for the purpose of being assayed. The bullion re-

maining from the operations of the assay shall be returned to the superintendent by the assayer. (R. S. § 3522.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 23, 17 Stat. 428.

§ 331. Report of quality of bullion assayed. The assayer shall report to the superintendent the quality or fineness of the bullion assayed by him, and such information as will enable him to compute the amount of the charges hereinafter provided for, to be made to the depositor. (R. S. § 3523.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 24, 17 Stat. 428.

§ 332. Charges for converting bullion into coin and bars. The charges for melting or refining bullion, for toughening when metals are contained in it which render it unfit for coinage, for copper used for alloy when the bullion is above standard, for separating the gold and silver when these metals exist together in the bullion, and for the preparation of bars, shall be fixed, from time to time, by the director, with the concurrence of the Secretary of the Treasury, so as to equal but not exceed, in their judgment, the actual average cost to each mint and assay office of the material, labor, wastage, and use of machinery employed in each of the cases aforementioned. (R. S. § 3524; Jan. 14, 1875, c. 15, § 2, 18 Stat. 296; Mar. 1, 1881, c. 95, 21 Stat. 374; Mar. 3, 1887, c. 396, § 3, 24 Stat. 635.)

Historical Note

This is from R. S. § 3524 (Act Feb. 12, 1873, c. 131, § 25, 17 Stat. 428) as amended by Act Jan. 14, 1875, c. 15, § 2, and Act March 1, 1881, c. 95, cited to the text.

A provision at the beginning of the section, as enacted in the Revised Statutes, that "The charge for converting standard gold bullion into coin shall be one-fifth of one per centum," was repealed by Act Jan. 14, 1875, c. 15, § 2.

The words in the next following provision of the section, as enacted in the Revised Statutes, "for melting and refining when bullion is below standard," were stricken out, and the words "for melting or refining bullion" were inserted in lieu thereof, as set forth here, by amendment by Act March 1, 1881, c. 95.

The words "for converting standard silver into trade-dollars," appearing in the original text, were superseded by the repeal of the laws authorizing the coinage of trade-dollars, by Act March 3, 1887, c. 396, § 3, 24 Stat. 635.

Cross-References

The moneys arising from charges collected from depositors for the refining and parting of bullion may be used to defray the expenses of refining and parting by section 361 of this title.

§ 333. Same; standard gold bullion. No charge shall be made for converting standard gold bullion into coin. (Jan. 14, 1875, c. 15, § 2, 18 Stat. 296.)

Historical Note

The portion of the original text of this section omitted here repealed so much of R. S. § 3524, as provided for a charge for converting standard gold bullion into coin.

§ 334. Verification of calculations of value of deposits; countersigning certificate. The assayer shall verify all calculations made by the superintendent of the value of deposits, and, if satisfied of the

correctness thereof, shall countersign the certificate required to be given by the superintendent to the depositor. (R. S. § 3525.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 26, 17 Stat. 428.

§ 335. Purchase of bullion for silver coinage; silver-profit fund. In order to procure bullion for the silver coinage authorized by this chapter, other than the silver dollar, the superintendents, with the approval of the Director of the Mint, as to price, terms, and quantity, shall purchase such bullion with the bullion fund. The gain arising from the coinage of such silver bullion into coin of a nominal value exceeding the cost thereof shall be credited to a special fund denominated the silver-profit fund. (R. S. § 3526; Mar. 2, 1889, c. 411, 25 Stat. 955.)

Editorial comment.—It has been suggested that the last part of R. S. § 3526, should not have been omitted. It read as follows: "This fund shall be charged with the wastage incurred in the silver coinage, and with the expense of distributing such silver coins as hereinafter provided. The balance to the credit of this fund shall be from time to time, and at least twice a year, paid into the Treasury of the United States."

Historical Note

This is from R. S. § 3526, which was derived from Act Feb. 12, 1873, c. 131, § 27, 17 Stat. 428, and which, prior to its incorporation into the Code, contained the provisions quoted in the editorial comment on this section. The provision quoted so far as it relates to wastage may be superseded by recent appropriation acts, which contain appropriations for wastage. See Act Jan. 26, 1927, c. 58, 44 Stat. 1040.

The Act of March 2, 1889, c. 411, cited to the text, prohibited the use of any portion of the silver profit fund to pay the expenses of transporting standard silver dollars from the mints or subtreasuries to the Treasury at Washington.

Notes of Decisions

1. Contract for metal.—Where a bid for metal for a mint is accepted by the chief clerk, it will be presumed that the bid was accepted with the consent and by the direction of the superintendent of the mint. Where proposals for metal have been made and accepted and a contract entered into for its delivery, the defendant's liability is not affected by the subsequent discontinuance of coinage by operation of law or by orders of the Secretary of the Treasury. Failure to execute the bond required by the advertisement is sufficient to cause the rejection of the offer if the defendant elected to do so, but the acceptance of the bid and receipt of some of the goods agreed to be delivered will be taken as a waiver of the requirement relating to the bond. The contractor's ownership of the article contracted for is not a subject for inquiry, the measure of liability is not determinable by his ownership or want of ownership of the required quantity as of the time of the contract. Where the contract to deliver the metal did not expire until the close of the fiscal year, and the contractor received notice that unless Congress should direct the resumption of silver coinage the metal would not be needed, it was optional with him to hold the contract open as long as there was any reasonable expectation for him to be called on to supply the metal which carried the profit to him. Having received this notice, and Congress having adjourned without ordering the resumption of such coinage, the notice was sufficiently explicit that no more metal was needed within the fiscal year, and it then became the contractor's duty to sell such metal as he had on hand within a reasonable time if he expected to hold the government liable for damage for breach of contract. Freidenstein v. U. S. (1899) 35 Ct. Cl. 1.

§ 336. Paying out silver coins for gold coins. Silver coins shall be paid out at the several mints, and at the assay office in New York City, in exchange for gold coins at par, in sums not less than $100. It shall be lawful, also, to transmit parcels of the same, from time to time, to depositaries and other officers of the United States, under

general regulations proposed by the Director of the Mint, and approved by the Secretary of the Treasury. Nothing herein contained shall, however, prevent the payment of silver coins, at their nominal value, for silver parted from gold, as provided in this chapter, or for change less than $1 in settlement for gold deposits. (R. S. § 3527.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 28, 17 Stat. 428.

A provision at the end of the section that for two years after Feb. 12, 1873, silver coins should be paid at the mint in Philadelphia and the assay office in New York City for silver bullion purchased for coinage was doubtless omitted as temporary and executed.

The words "other than the trade dollar" which followed the words "silver coins" at the beginning of the section were superseded by the repeal of laws authorizing the coinage and issue of trade dollars by Act March 3, 1887, c. 396, § 3, 24 Stat. 635.

The words "assistant treasurers" which preceded the word "depositaries" in the original text were superseded by Act May 29, 1920, c. 214, § 1, 41 Stat. 654, repealing all laws authorizing assistant treasurers and subtreasuries at certain cities.

Cross-References

The holder of any silver coins of smaller denominations than one dollar is entitled, on presentation of the same in sums of $20, or any multiple thereof, at the office of the Treasurer or designated depositary to receive therefor lawful money of the United States, by section 337 of this title, and by section 338 of this title, the Treasurer or depositary is required upon receiving any of the coins under specified sections to exchange the same, in sums of $20, or any multiple thereof, for lawful money of the United States.

§ 337. Exchange of subsidiary silver coin for lawful money. The holder of any of the silver coins of the United States of smaller denominations than $1, may, on presentation of the same in sums of $20, or any multiple thereof, at the office of the Treasurer or any designated depositary of the United States, which the Secretary of the Treasury may direct for that purpose, receive therefor lawful money of the United States. (June 9, 1879, c. 12, § 1, 21 Stat. 7; May 20,* 1920, c. 214, § 1, 41 Stat. 655.)

* "20" should read "29."

Historical Note

This section and section 338 of this title were part of an act of June 9, 1879, entitled "An act to provide for the exchange of subsidiary coins for lawful money of the United States under certain circumstances and to make such coins a legal tender in all sums not exceeding ten dollars, and for other purposes."

Section 3 of the act provided that the subsidiary silver coins of the United States should be a legal tender in all sums not exceeding $10 in full payment of all dues public and private. It is set forth in section 459 of this title.

Section 4 of the act repealed all laws in conflict therewith.

Prior to its incorporation into the Code this section referred to presentation at the office of the Treasurer "or any assistant treasurer of the United States." By Act May 20, 1920, c. 214, § 1, cited to the text, the office of the assistant treasurers at certain cities were abolished and the Secretary of the Treasury was authorized to transfer their duties to the Treasurer, or the mints or assay offices, or to utilize any of the federal reserve banks acting as depositaries or fiscal agents.

§ 338. Same. The Treasurer or any depositary of the United States who may receive any coins under sections 337, 338, and 459 of this title shall exchange the same in sums of $20, or any multiple thereof, for lawful money of the United States, on demand of any holder thereof. (June 9, 1879, c. 12, § 2, 21 Stat. 8.)

Editorial comment.—Perhaps "May 29, 1920, c. 214, § 1, 41 Stat. 655" should be added as a credit to the text, the words "or any depositary of the United States" being apparently based on that section.

Historical Note

Prior to its incorporation into the Code this section referred to the Treasurer "or any assistant treasurer of the United States." As to this change, and also generally, see the historical note to section 337 of this title.

§ 339. Free transportation of silver coin. The Secretary of the Treasury is authorized and directed to transport free of charge silver coin when requested to do so: *Provided,* That an equal amount in coin or currency shall have been deposited in the Treasury by the applicant or applicants. (Aug. 7, 1882, c. 433, § 1, 22 Stat. 312.)

Historical Note

This was a provision of the sundry civil appropriation act for the fiscal year 1883, cited to the text. It may be regarded as permanent in its nature, notwithstanding it was followed by a clause making an appropriation of $10,000 or so much thereof as might be necessary for the purpose of defraying the expenses of transportation.

A provision in the same language as that of this section, except that the appropriation was $20,000, was contained in the sundry civil appropriation act for the fiscal year 1882, Act March 3, 1881, c. 133, § 1, 21 Stat. 447.

Subsequent appropriations for transportation of silver coin, in later years, "for transportation of fractional silver coin, by registered mail or otherwise," with directions that such coin be transported "from the Treasury or subtreasuries, free of charge," were made in the annual sundry civil appropriation acts down to the fiscal year 1910, provision for which was made by Act March 4, 1909, c. 299, § 1, 35 Stat. 966, and by the deficiency appropriation act, Act June 25, 1910, c. 385, 36 Stat. 777. All these appropriations were accompanied by similar appropriations for transportation of minor coin. No appropriations for these purposes were made thereafter.

Cross-References

Contracts for the transportation of moneys, bullion, coin, notes, bonds, and other securities of the United States, and paper are to be let to the lowest responsible bidder, when practicable, by section 24 of Title 41, Public Contracts.

§ 340. Purchase of metal for minor coinage; profit fund. For the purchase of metal for the minor coinage, authorized by this chapter, a sum not exceeding $400,000 in lawful money of the United States shall, upon the recommendation of the Director of the Mint and in such sums as he may designate, with the approval of the Secretary of the Treasury, be transferred to the credit of the superintendents of the mints at Philadelphia, San Francisco, and Denver, at which establishments, until otherwise provided by law, such coinage shall be carried on. The superintendents, with the approval of the Director of the Mint as to price, terms, and quantity shall purchase the metal required for such coinage by public advertisement, and the lowest and best bid shall be accepted, the fineness of the metals to be determined on the mint assay. The gain arising from the coinage of such metals into coin of a nominal value, exceeding the cost thereof, shall be credited to the special fund denominated the minor coinage profit fund; and this fund shall be charged with the wastage incurred in such coinage, and with the cost of distributing said coins, as hereinafter provided. The balance remaining to the credit of this fund, and any balance of the profits accrued from minor coinage under former Acts, shall be, from time to time, and at least twice a year, covered into the Treasury of the United States. (R. S. § 3528; Apr. 24, 1906, c. 1861, 34 Stat. 132; Dec. 2, 1918, c. 1, 40 Stat. 1051.)

Historical Note

This is R. S. § 3528 (Act Feb. 12, 1873, c. 131, § 29, 17 Stat. 429) as amended by the other acts cited in the credits to the text.

The amendment by Act April 24, 1906, c. 1861, consisted chiefly in the increase of the amount to be transferred for the purchase of metal from $50,000 to $200,000, and in including other mints with the mint at Philadelphia for carrying on such coinage.

The amendment of 1918 consisted in increasing the amount for the purchase of metal from $200,000 to $400,000, and in striking out New Orleans from the enumerated lists of mints.

§ 341. Delivery of minor coins; redemption. The minor coins authorized by this chapter may, at the discretion of the Director of the Mint, be delivered in any of the principal cities and the towns of the United States, at the cost of the mints, for transportation, and shall be exchangeable at par at the mints named, at the discretion of the superintendents, for any other coins of copper, bronze, or copper-nickel authorized, and it shall be lawful for the Treasurer and depositaries of the United States to redeem, in lawful money, under such rules as may be prescribed by the Secretary of the Treasury, all copper, bronze, and copper-nickel coins authorized by law when presented in sums of not less than $20; and whenever, under this authority, these coins are presented for redemption in such quantity as to show the amount outstanding to be redundant, the Secretary of the Treasury is authorized and required to direct that such coinage shall cease until otherwise authorized by him. (R. S. § 3529; Apr. 24, 1906, c. 1861, 34 Stat. 132.)

Historical Note

This is R. S. § 3529 (Act Feb. 12, 1873, c. 131, § 30, 17 Stat. 429) as amended by Act April 24, 1906, c. 1861, cited to the text.

The amendment consisted of changes required to conform to R. S. § 3258, as amended by the same act. See the historical note to section 340 of this title.

Upon incorporation into the Code, the words "and the several assistant treasurers" which followed the word "Treasurer" in the original text were evidently omitted as superseded by Act May 29, 1920, c. 214, § 1, 41 Stat. 655, abolishing the offices of the assistant treasurers.

Appropriations for transportation of minor coin, free of charge, when requested, on deposit of an equal amount in coin or currency in the Treasury or subtreasuries, were made by the sundry civil appropriation acts for several years down to the fiscal year 1910, the provision for which was made by Act March 4, 1909, c. 298, § 1, 35 Stat. 909, and by the deficiency appropriation act, Act June 25, 1910, c. 385, 36 Stat. 777.

Appropriations for recoinage of worn and uncurrent minor coins are made in recent sundry civil appropriation acts. The provision for the fiscal year 1928, was by Act Jan. 26, 1927, c. 58, Title I, 44 Stat. 1031.

§ 342. Cleaning, reissue, and recoinage of minor coins. The Secretary of the Treasury may transfer to the United States mint at Philadelphia, for cleaning and reissue, any minor coins received at the offices of designated depositaries in excess of the requirement for the current business of said offices. (June 4, 1897, c. 2, § 1, 30 Stat. 27; May 29, 1920, c. 214, § 1, 41 Stat. 655.)

Historical Note

This is from the Sundry Civil Appropriation Act of June 4, 1897, c. 2, cited to the text.

A further provision, immediately following, authorized the Secretary of the Treasury to recoin any and all the uncurrent minor coins then in the Treasury. This provision was doubtless omitted as temporary.

Similar provisions were contained in previous appropriation acts.

Upon incorporation of this section into the Code, the words "the subtreasury offices" were evidently changed to "the offices of designated depositaries" to conform to Act May 29, 1920, c. 214, § 1, 41 Stat. 655, abolishing the subtreasuries.

§ 343. Transfer of bullion for formation into ingots. Parcels of bullion shall be, from time to time, transferred by the superintendent to the superintendent of melting and refining department. A careful record of these transfers, noting the weight and character of the bullion, shall be kept, and vouchers shall be taken for the delivery of the same, duly receipted by the superintendent of melting and refining department. The bullion thus placed in the hands of the superintendent of melting and refining department shall be subjected to the several processes which may be necessary to form it into ingots of the legal standard, and of a quality suitable for coinage. (R. S. § 3530; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is R. S. § 3530, which was derived from Act Feb. 12, 1873, c. 131, § 31, 17 Stat. 429.

Upon incorporation into the Code, the words "melter and refiner" were changed to "superintendent of melting and refining department." See the historical note to section 274 of this title concerning this change.

§ 344. Assay of ingots. The ingots so prepared shall be assayed. If they prove to be within the limits allowed for deviation from the standard, the assayer shall certify the fact to the superintendent, who shall thereupon receipt for the same, and transfer them to the superintendent of coining department. (R. S. § 3531; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 23, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is R. S. § 3531 (Act Feb. 12, 1873, c. 131, § 32, 17 Stat. 429) with the word "coiner" changed to "superintendent of coining department." As to this change, see the historical note to section 274 of this title.

§ 345. Delivery of ingots for coinage. The superintendent shall, from time to time, deliver to the superintendent of coining department ingots for the purpose of coinage. A careful record of these transfers, noting the weight and character of the bullion, shall be kept, and vouchers shall be taken for the delivery of the same, duly receipted by the superintendent of coining department. The ingots thus placed in the hands of the superintendent of coining department shall be subjected to the several processes necessary to make from them coins in all respects conformable to law. (R. S. § 3532; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is R. S. § 3532 (Act Feb. 12, 1873, c. 131, § 35, 17 Stat. 429) with the word "coiner" in several places changed to "superintendent of coining department." As to this change, see the historical note to section 274 of this title.

§ 346. Standard of ingots used for coinage. No ingots shall be used for coinage which differ from the legal standard more than the following proportions, namely: In gold ingots, one-thousandth; in silver ingots, three-thousandths; in minor-coinage alloys, twenty-five thousandths, in the proportion of nickel. (R. S. § 3533.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 33, 17 Stat. 429.

§ 347. Preparation and stamping of bars for payment of deposits. The superintendent of melting and refining department shall prepare all bars required for the payment of deposits; but the fineness thereof shall be ascertained and stamped thereon by the assayer. The superintendent of melting and refining department shall deliver such bars to the superintendent, who shall receipt for the same. (R. S. § 3534; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is R. S. § 3534 (Act Feb. 12, 1873, c. 131, § 34, 17 Stat. 429) with the words "melter and refiner" in two places changed to "superintendent of melting and refining department." As to this change, see the historical note to section 274 of this title.

§ 348. Deviations allowed in adjusting weights; gold coins. In adjusting the weights of the gold coins, the following deviations shall not be exceeded in any single piece: In the double-eagle and the eagle, one-half of a grain; in the half-eagle and the quarter-eagle, one-fourth of a grain. And in weighing a number of pieces together, when delivered by the superintendent of coining department to the superintendent, and by the superintendent to the depositor, the deviation from the standard weight shall not exceed one-hundredth of an ounce in $5,000 in double-eagles, eagles, half-eagles, or quarter-eagles. (R. S. § 3535; Sept. 26, 1890, c. 945, § 1, 26 Stat. 485; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is from R. S. § 3535, which was derived from Act Feb. 12, 1873, c. 131, § 36, 17 Stat. 430.

References in that section to the three dollar and one dollar pieces were evidently omitted as superseded by Act Sept. 26, 1890, c. 945, § 1, cited to the text, discontinuing the coinage of those pieces.

The word "coiner" in the second sentence was changed to "superintendent of coining department." As to this change, see the historical note to section 274 of this title.

§ 349. Same; silver coins. In adjusting the weight of the silver coins the following deviations shall not be exceeded in any single piece: In the dollar, the half and quarter dollar, and in the dime, one and one-half grains. (R. S. § 3536; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249; Mar. 4, 1911, c. 267, 36 Stat. 1354.)

Historical Note

This is R. S. § 3536 (Act Feb. 12, 1873, c. 131, § 37, 17 Stat. 430) as amended by the other acts cited to the text.

The amendment of 1877 related to a provision then contained in the section concerning the deviations permitted in weighing large numbers of pieces. The amendment of 1911 consisted of the omission of such provision.

§ 350. Same; minor coins. In adjusting the weight of the minor coins provided by this chapter, there shall be no greater deviation

allowed than three grains for the 5-cent piece and two grains for the 1-cent piece. (R. S. § 3537; Sept. 26, 1890, c. 945, § 1, 26 Stat. 485.)

Historical Note

This is R. S. § 3537 (Act Feb. 12, 1873, c. 131, § 38, 17 Stat. 430) with a reference to the three cent piece omitted. The coinage of three-cent pieces was discontinued by section 1 of the Act of Sept. 26, 1890, c. 945, cited to the text.

§ 351. Delivery of coins to superintendent and trial of pieces. The superintendent of coining department shall, from time to time, as coins are prepared, deliver them to the superintendent, who shall receipt for the same, and who shall keep a careful record of their kind, number, and actual weight. In receiving coins it shall be the duty of the superintendent to ascertain, by the trial of a number of single pieces separately, whether the coins of that delivery are within the legal limits of the standard weight; and if his trials for this purpose shall not prove satisfactory, he shall cause all the coins of such delivery to be weighed separately, and such as are not of legal weight shall be defaced and delivered to the superintendent of melting and refining department as standard bullion, to be again formed into ingots and recoined; or the whole delivery may, if more convenient, be remelted. (R. S. § 3538; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is R. S. § 3538 (Act Feb. 12, 1873, c. 131, § 39, 17 Stat. 430) with the words "coiner" and "melter and refiner" changed to "superintendent of coining department" and "superintendent of melting and refining department" respectively. As to these changes, see the historical note to section 274 of this title.

§ 352. Sealing and transmitting trial pieces. At every delivery of coins made by the superintendent of coining department to a superintendent, it shall be the duty of such superintendent, in the presence of the assayer, to take indiscriminately a certain number of pieces of each variety for the annual trial of coins, the number for gold coins being not less than one piece for each one thousand pieces or any fractional part of one thousand pieces delivered; and for silver coins one piece for each two thousand pieces or any fractional part of two thousand pieces delivered. The pieces so taken shall be carefully sealed up in an envelope, properly labeled, stating the date of the delivery, the number and denomination of the pieces inclosed, and the amount of the delivery from which they were taken. These sealed parcels containing the reserved pieces shall be deposited in a pyx, designated for the purpose at each mint, which shall be kept under the joint care of the superintendent and assayer, and be so secured that neither can have access to its contents without the presence of the other, and the reserved pieces in their sealed envelopes from the coinage of each mint shall be transmitted quarterly to the mint at Philadelphia. A record shall also be kept at the same time of the number and denomination of the pieces so taken for the annual trial of coins, and of the number and denomination of the pieces represented by them and so delivered, a copy of which record shall be transmitted quarterly to the Director of the Mint. Other pieces may

at any time be taken for such tests as the Director of the Mint shall prescribe. (R. S. § 3539; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is R. S. § 3539 (Act Feb. 12, 1873, c. 131, § 40, 17 Stat. 430) with the word "coiner" changed to "superintendent of coining department." See, as to this change, the historical note to section 274 of this title.

§ 353. Disposals of clippings. The superintendent of coining department shall, from time to time, deliver to the superintendent the clippings and other portions of bullion remaining after the process of coining; and the superintendent shall receipt for the same and keep a careful record of their weight and character. (R. S. § 3540; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is R. S. § 3540 (Act Feb. 12, 1873, c. 131, § 41, 17 Stat. 430) with the word "coiner" changed to "superintendent of coining department." Concerning this change, see the historical note to section 274 of this title.

§ 354. Yearly settlement of accounts. The superintendent shall debit the superintendent of coining department with the amount in weight of standard metal of all the bullion placed in his hands, and credit him with the amount in weight of all the coins, clippings, and other bullion returned by him to the superintendent. Once at least in every year, and at such time as the Director of the Mint shall appoint, there shall be an accurate and full settlement of the accounts of the superintendent of coining department, and the superintendent of melting and refining department, at which time those officers shall deliver up to the superintendent all the coins, clippings, and other bullion in their possession, respectively, accompanied by statements of all the bullion delivered to them since the last annual settlement, and all the bullion returned by them during the same period, including the amount returned for the purpose of settlement. (R. S. § 3541; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is R. S. § 3541 (Act Feb. 12, 1873, c. 131, § 42, 17 Stat. 431) with the words "coiner" and "melter and refiner" changed to "superintendent of coining department" and "superintendent of melting and refining department" respectively. Concerning these changes, see the historical note to section 274 of this title.

§ 355. Allowance for wastage. When all the coins, clippings, and other bullion have been delivered to the superintendent, it shall be his duty to examine the accounts and statements rendered by the superintendent of coining department and the superintendent of melting and refining department. The difference between the amount charged, and credited to each officer shall be allowed as necessary wastage, if the superintendent shall be satisfied that there has been a bona fide waste of the precious metals, and if the amount shall not

exceed, in the case of the superintendent of melting and refining department, one-thousandth of the whole amount of gold, and one and one-half thousandths of the whole amount of silver delivered to him since the last annual settlement, and in the case of the superintendent of coining department, one-thousandth of the whole amount of silver, and one-half thousandth of the whole amount of gold that has been delivered to him by the superintendent. All copper used in the alloy of gold and silver bullion shall be separately charged to the superintendent of melting and refining department, and accounted for by him. (R. S. § 3542; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is R. S. § 3542 (Act Feb. 12, 1873, c. 131, § 43, 17 Stat. 431). The same changes have been made therein as in R. S. § 3541 (section 354 of this title). See the historical notes to sections 274 and 354 of this title.

§ 356. Statement of balance sheet forwarded to Director of Mint. It shall also be the duty of the superintendent to forward a correct statement of his balance sheet, at the close of such settlement, to the Director of the Mint; who shall compare the total amount of gold and silver bullion and coin on hand with the total liabilities of the mint. At the same time a statement of the ordinary expense account, and the moneys therein, shall also be made by the superintendent. (R. S. § 3543.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 44, 17 Stat. 431.

§ 357. Delivery of coin or bars to depositor. When the coins or bars which are the equivalent to any deposit of bullion are ready for delivery, they shall be paid to the depositor, or his order, by the superintendent; and the payments shall be made, if demanded, in the order in which the bullion shall have been brought to the mint. In cases, however, where there is delay in manipulating a refractory deposit, or for any other unavoidable cause, the payment of subsequent deposits, the value of which is known, shall not be delayed thereby. In the denominations of coin delivered, the superintendent shall comply with the wishes of the depositor, except when impracticable or inconvenient to do so. (R. S. § 3544.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 45, 17 Stat. 431.

§ 358. Payment in money to depositors when value ascertained. For the purpose of enabling the several mints and assay offices of the United States to make returns to depositors with as little delay as possible, it shall be the duty of the Secretary of the Treasury to keep in such mints and assay offices, when the state of the Treasury will admit thereof, such an amount of public money, or bullion procured for the purpose, as he shall judge convenient and necessary, out of which those who bring bullion to the said mints and assay offices may,

under such rules and regulations as may be prescribed by the said Secretary, be paid the value thereof, in coin or bars, as soon as practicable after the value has been ascertained. On payment thereof being made, the bullion so deposited shall become the property of the United States. The Secretary of the Treasury may, however, at any time withdraw the fund or any portion thereof. (R. S. § 3545; June 19, 1878, c. 329, § 1, 20 Stat. 191.)

Historical Note

This is R. S. § 3545 (Act Feb. 12, 1873, c. 131, § 47, 17 Stat. 431) as, in effect, amended by Act June 19, 1878, c. 329, § 1, cited to the text.

R. S. § 3545 applied only to the mints and the assay office at New York. It was made applicable to the several mints and assay offices by the Act of 1878, which further provided "all of said acts and duties to be performed under such rules and regulations as shall be prescribed by the Secretary of the Treasury."

§ 359. Payment for bullion in coin certificates. The Secretary of the Treasury may use, as far as he may deem it proper and expedient, for payment to depositors of bullion at the several mints and the assay office in New York, under such rules and regulations as he may prescribe, coin certificates, representing coin in the Treasury, and issued under the provisions of section 428 of this title. (June 19, 1878, c. 329, § 1, 20 Stat. 191; Mar. 3, 1879, c. 182, § 1, 20 Stat. 383; Mar. 4, 1911, c. 240, 36 Stat. 1292.)

Historical Note

This is from Act June 19, 1878, c. 329, § 1, cited in the credits to the text. As enacted, it applied to the several mints and assay offices, but it was repealed so far as it applied to mints and assay offices other than those mentioned in R. S. § 3545, by Act March 3, 1879, c. 182, § 1, also cited to the text. See the historical note to section 358 of this title as to R. S. § 3545.

In the Act of 1879, the provision incorporated in this section was preceded by a provision making R. S. § 3545 applicable to the several mints and assay offices, and was followed by a provision that it should be lawful to apply moneys arising from charges collected from depositors at the several mints and assay offices to defraying the expenses thereof. This last mentioned provision may have been omitted as inconsistent with later appropriation acts, as superseded by section 361 of this title, or as repealed by Act March 4, 1911, c. 240, repealing all laws making a permanent indefinite appropriation for the expenses of parting and refining bullion, and requiring annual estimates of such expenses to be submitted to Congress.

§ 360. Exchange of unparted bullion for fine bars. Unparted bullion may be exchanged at any of the mints for fine bars, on such terms and conditions as may be prescribed by the Director of the Mint, with the approval of the Secretary of the Treasury. The fineness, weight, and value of the bullion received and given in exchange shall in all cases be determined by the mint assay. The charge to the depositor for refining or parting shall not exceed that allowed and deducted for the same operation in the exchange of unrefined for refined bullion. (R. S. § 3546.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 46, 17 Stat. 431.

Cross-References

When the bullion received is not in such proportion of gold and silver as to admit of economical parting, or the necessary supplies of acids cannot be procured at reasonable rates, unparted bullion may be exchanged for fine bars, as provided by this section, by section 362 of this title.

§ 361. Refining and parting bullion. Refining and parting of bullion shall be carried on at the coinage mints of the United States and at the assay office at New York, and it shall be lawful to apply the moneys arising from charges collected from depositors for these operations, and also the proceeds of sale of by-products (spent acids arising from any surplus bullion recovered in parting and refining processes), pursuant to law, so far as may be necessary, to defraying in full the expenses thereof, including labor, material, wastage, and loss on sale of sweeps. But no part of the moneys appropriated for the support of the coinage mints and assay office at New York shall be used to defray the expenses of parting and refining bullion. (June 19, 1878, c. 329, § 1, 20 Stat. 191; July 7, 1898, c. 571, § 1, 30 Stat. 661.)

Editorial comment.—This section may be in part repealed by Act March 4, 1911, c. 240, 36 Stat. 1292, repealing all laws and parts of laws to the extent that they make a permanent indefinite appropriation for expenses of parting and refining bullion, and requiring the submission of annual estimates of such expenses.

Historical Note

This is from Act July 7, 1898, c. 571, § 1, cited to the text, which superseded a similar provision in Act June 19, 1878, c. 329, § 1, also cited to the text, and a provision similar to part of this section in Act March 3, 1881, c. 130, 21 Stat. 398.

Cross-References

The charges for melting, refining, and parting bullion, are fixed by the Director of the Mint with the concurrence of the Secretary of the Treasury under section 332 of this title.

§ 362. Same; exchange of unparted bullion for fine bars. When the bullion received shall not, in the aggregate, be in such proportion of gold and silver as to admit of economical parting, or the necessary supplies of acids can not be procured at reasonable rates, unparted bullion may be exchanged for fine bars, as provided in section 360 of this title. (June 19, 1878, c. 329, § 1, 20 Stat. 191.)

Historical Note

The portion of the original text of this section omitted here was superseded by section 361 of this title.

§ 363. Assay commissioners. To secure a due conformity in the gold and silver coins to their respective standards of fineness and weight, the judge of the District Court for the Eastern District of Pennsylvania, the Comptroller of the Currency, the assayer of the assay office at New York, and such other persons as the President shall, from time to time, designate, shall meet as assay commissioners, at the mint in Philadelphia, to examine and test, in the presence of the Director of the Mint, the fineness and weight of the coins reserved by the several mints for this purpose, on the second Wednesday in February, annually, and may continue their meetings by adjournment, if necessary. If a majority of the commissioners fail to attend at any time appointed for their meeting, the Director of the Mint shall call a meeting of the commissioners at such other time as he may deem convenient. If it appears by such examination and test that these coins do not differ from the standard fineness and weight by a greater quantity than is allowed by law, the trial shall be considered and reported as satisfactory. If, however, any greater deviation from the legal standard or weight appears, this fact shall

be certified to the President; and if, on a view of the circumstances of the case, he shall so decide, the officers implicated in the error shall be thenceforward disqualified from holding their respective offices. (R. S. § 3547.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 48, 17 Stat. 432.

§ 364. Standard troy pound for regulation of coinage. For the purpose of securing a due conformity in weight of the coins of the United States to the provisions of the laws relating to coinage, the standard troy pound of the Bureau of Standards of the United States shall be the standard troy pound of the mint of the United States, conformably to which the coinage thereof shall be regulated. (R. S. § 3548; Mar. 4, 1911, c. 268, § 1, 36 Stat. 1354.)

Historical Note

This is R. S. § 3548 (Act Feb. 12, 1873, c. 131, § 49, 17 Stat. 432) as amended by Act March 4, 1911, c. 268, § 1, cited to the text.

This section, as enacted in the Revised Statutes, made the brass troy pound weight, procured at London, and in the custody of the mint at Philadelphia, the standard troy pound of the mint, and R. S. § 3549 (now section 365 of this title) provided for procuring for each mint and assay-office a series of standard weights corresponding to said standard troy pound.

Both sections were amended by substituting for said standard troy pound and weights corresponding thereto the standard troy pound of the Bureau of Standards and weights corresponding to it, making the sections read as set forth in this section and section 365 of this title, by Act March 4, 1911, c. 268, § 1.

§ 365. Standard weights for mints and assay offices. It shall be the duty of the Director of the Mint to procure for each mint and assay office, to be kept safely thereat, a series of standard weights corresponding to the standard troy pound of the Bureau of Standards of the United States, consisting of a one-pound weight and the requisite subdivisions and multiples thereof, from the hundredths part of a grain to twenty-five pounds. The troy weight ordinarily employed in the transactions of such mints and assay offices shall be regulated according to the above standards at least once in every year, under the inspection of the superintendent and assayer; and the accuracy of those used at the mint at Philadelphia shall be tested annually, in the presence of the assay commissioners, at the time of the annual examination and test of coins. (R. S. § 3549; Mar. 4, 1911, c. 268, § 2, 36 Stat. 1354.)

Historical Note

This is R. S. § 3549 (Act Feb. 12, 1873, c. 131, § 50, 17 Stat. 432) as amended by Act March 4, 1911, c. 268, § 2, cited to the text. See the historical note to section 364 of this title

§ 366. Destruction of obverse working dies. The obverse working dies at each mint shall, at the end of each calendar year, be defaced and destroyed by the superintendent of coining department in the presence of the superintendent and assayer. (R. S. § 3550; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is R. S. § 3550 (Act Feb. 12, 1873, c. 131, § 51, 17 Stat. 432) with the word "coiner" changed to "superintendent of coining department." Concerning this change, see the historical note to section 274 of this title.

§ 367. Coinage for foreign countries. It shall be lawful for coinage to be executed at the mints of the United States for any foreign country applying for the same, according to the legally prescribed standards and devices of such country, under such regulations as the Secretary of the Treasury may prescribe; and the charge for the same shall be equal to the expenses thereof, including labor, materials, and use of machinery, to be fixed by the Director of the Mint, with the approval of the Secretary of the Treasury: *Provided,* That the manufacture of such coin shall not interfere with the required coinage of the United States. (Jan. 29, 1874, c. 19, 18 Stat. 6.)

Historical Note

This was an act entitled "An act authorizing coinage to be executed at the mints of the United States for foreign countries."

Notes of Decisions

1. **Coinage for foreign governments.**—Prior to this act there was no authority given by statute which would allow the mints of the United States to be employed for the purpose of striking coins for foreign governments and nationalities, of such standards and devices as those governments and nationalities might adopt. (1873) 14 Op. Atty. Gen. 219.

§ 368. National and other medals struck at Philadelphia Mint. Dies of a national character may be executed by the engraver, and national and other metals struck by the superintendent of coining department of the mint at Philadelphia, under such regulations as the superintendent, with the approval of the Director of the Mint, may prescribe. Such work shall not, however, interfere with the regular coinage operations, and no private metal dies shall be prepared at any mint, or the machinery or apparatus thereof be used for that purpose. (R. S. § 3551; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103.)

Editorial comment.—See the comment on section 274 of this title.

Historical Note

This is R. S. § 3551 (Act Feb. 12, 1873, c. 131, § 52, 17 Stat. 432) with the word "coiner" changed to "superintendent of coining department." Concerning this change, see the historical note to section 274 of this title.

Act March 2, 1925, c. 393, 43 Stat. 1096, provided that a medal, not to exceed in number forty thousand, with appropriate devices, emblems, and inscriptions commemorative of the arrival in the United States of the first shipload of Norse immigrants should be prepared under the direction of the Secretary of the Treasury at the United States Mint at Philadelphia, subject to the provisions of this section. It was probably omitted from the Code as temporary.

§ 369. Money arising from charges and deductions covered into Treasury. The moneys arising from all charges and deductions on and from gold and silver bullion and the manufacture of medals, and from all other sources, except as provided by this chapter, shall, from time to time, be covered into the Treasury, and no part of such deductions or medal charges, or profit on silver or minor coinage, shall be expended in salaries or wages. All expenditures of the mints and assay offices, not herein otherwise provided for, shall be paid from

appropriations made by law on estimates furnished by the Secretary of the Treasury. (R. S. § 3552.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 53, 17 Stat. 432.

§ 370. Transfer of bars to depositary; redemption of coin certificates or exchange for gold coins. The Secretary of the Treasury may, from time to time, transfer to the office of the United States depositary at New York from the bullion fund of the assay office at New York, refined gold bars bearing the United States stamp of fineness, weight and value, or bars from any melt of foreign gold coin or bullion of standard equal to or above that of the United States and may apply the same to the redemption of coin certificates or in exchange for gold coins at not less than par and not less than the market value subject to such regulations as he may prescribe. (June 22, 1874, c. 419, 18 Stat. 202; May 29, 1920, c. 214, § 1, 41 Stat. 654, 655.)

Historical Note

This was an act of June 22, 1874, entitled "An act authorizing the transfer of gold mint bars from the bullion fund of the assay-office New York to the Assistant Treasurer at New York."

The words "Assistant Treasurer" appearing in the original text were evidently changed to "United States depositary" because of Act May 29, 1920, c. 214, § 1, abolishing the office of assistant treasurer, and authorizing United States depositaries to be utilized for the performance of the duties and functions performed by the assistant treasurers.

§ 371. Decimal system established. The money of account of the United States shall be expressed in dollars or units, dimes or tenths, cents or hundredths, and mills or thousandths, a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, a mill the thousandth part of a dollar; and all accounts in the public offices and all proceedings in the courts shall be kept and had in conformity to this regulation. (R. S. § 3563.)

Historical Note

This section of the Revised Statutes was derived from Act April 2, 1792, c. 16, § 20, 1 Stat. 250.

§ 372. Value of foreign coins; how ascertained. (a) The value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly on the 1st day of January, April, July, and October in each year.

(b) For the purpose of the assessment and collection of duties upon merchandise imported into the United States, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (c), shall be made at the values proclaimed by the Secretary of the Treasury under the provisions of paragraph (a) of this section, for the quarter in which the merchandise was exported.

(c) If no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by

the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate. For the purposes of this subdivision such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal Reserve bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through the exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange. (Aug. 27, 1894, c. 349, § 25, 28 Stat. 552; May 27, 1921, c. 14, § 403[a], 42 Stat. 17; Sept. 21, 1922, c. 356, Title IV, § 522 (a),* 42 Stat. 974.)

* "(a)" should be omitted, or changed to "(a) (b) (c)."

Historical Note

This is section 522 of the Tariff Act of Sept. 21, 1922, c. 356. Subdivision (a) of that section amended Act Aug. 27, 1894, c. 349, § 25, as amended by Act May 27, 1921, c. 14, § 403(a). The amendment by the Act of 1922 was merely a re-enactment of the section as previously amended.

Paragraph e of § 403 of title IV of act May 27, 1921, provided that the section, as in force prior to its amendment by par. a, should remain in force for the assessment and collection of duties on merchandise imported into the United States prior to the day of the enactment of said act.

Subdivisions (b) and (c) of section 522 of the Act of 1922 superseded substantially identical provisions in subdivisions (b) and (c) of section 403 of the Act of 1921.

Section 25 of the Act of Aug. 27, 1894, mentioned above superseded provisions of the McKinley Tariff Act of 1890, Act Oct. 1, 1890, c. 1244, § 52, 26 Stat. 624, relating to the same subject, which superseded R. S. § 3564.

R. S. § 2903, requiring the President to cause regulations to be established for estimating duties when the original cost should be exhibited in depreciated foreign currency, and R. S. § 3565, relative to the value of the sovereign or pound sterling, were repealed by par. d, of § 403 of title IV of Act May 27, 1921, c. 14, entitled "General Provisions." Par. e of said act provided that section 2903 should remain in force for the assessment and collection of duties on merchandise imported into the United States prior to the day of the enactment of said act.

Act Sept. 24, 1918, c. 176, § 4, 40 Stat. 966, relative to stabilizing foreign exchanges, etc., during the war and for two years after its termination, was doubtless omitted from the Code as temporary and obsolete.

Cross-References

Provisions concerning the currency in which invoice prices are to be shown, are contained in section 331 of Title 19, Customs Duties.

Notes of Decisions

1. Repeals.
2. Application.
3. Estimation of value.
4. —— Conclusiveness.
5. —— Dates.
6. Valuation of imported merchandise.
7. —— Reliquidation.
8. —— Impairment of rights.
9. Depreciated currency (R. S. § 2903).
10. —— Consular certificates.
11. Value of pound sterling (R. S. § 3565).
12. Value of Brementhaler.
13. Money in which judgment expressed.

1. Repeals.—As to Act 1792, § 9, and Act 1793, regulating coinage and declaring what foreign coin should pass current as money, see U. S. v. Gardner (N. J. 1836) 10 Pet. 618, 621, 9 L. Ed. 556.

As to Act March 2, 1799, § 61 (R. S. § 2903, now expressly repealed), see Grant v. Maxwell (C. C. N. Y. 1851) Fed. Cas. No. 5,699.

Repeal of Act May 22, 1846, by Act March 3, 1873 (R. S. §§ 3564, 3565, superseded and repealed), see Collector v. Richards (N. Y. 1875) 90 U. S. (23 Wall.) 246, 23 L. Ed. 95.

2. **Application.**—This section is to be applied in all cases where the estimation of the value of foreign moneys of account is required by law; and its principal and perhaps most important purpose is the estimation of invoice values on imported goods chargeable with ad valorem duties. Arthur v. Richards (N. Y. 1875) 23 Wall. 246, 257, 23 L. Ed. 95; Cramer v. Arthur (N. Y. 1881) 102 U. S. 612, 26 L. Ed. 259.

As to exception of the sovereign or pound sterling of Great Britain, under prior laws, see (1874) 14 Op. Atty. Gen. 353, 357, note. Arthur v. Richards (N. Y. 1875) 23 Wall. 246, 23 L. Ed. 95.

Act March 2, 1799, § 61 (R. S. § 2903, repealed), fixing the value of foreign coins, did not apply to contracts between private parties, as in the case of an insurance of a cargo invoiced in rupees. Phillips v. Insurance Co. of Pennsylvania (C. C. Pa. 1821) Fed. Cas. No. 11,102.

Act March 3, 1843, fixing the value of the "mark," did not apply to its value for commercial purposes. The Blohm (D. C. N. Y. 1867) Fed. Cas. No. 1,556.

R. S. § 2903 (repealed), prescribing method of ascertaining the cost in depreciated currency of imported merchandise, did not preclude the application of this section (1925). 34 Op. Atty. Gen. 468.

As to application of Emergency Tariff Act 1921 § 403 (incorporated in part in this section) to importations before, and on the day of, its enactment, see Diana v. U. S. (1924) 12 Ct. Cust. App. 290; U. S. v. Brown & Roese (1925) 12 Ct. Cust. App. 497.

3. **Estimation of value.**—The provision in section 1 of Act March 3, 1873 (superseded) that the value of foreign coin as expressed in the money of account of the United States should be that of the pure metal of such coin of standard value meant that the value of foreign coin in United States money should be measured by the amount of pure metal contained therein when of standard value; that is, when of the weight and fineness required by the laws and regulations of the country where they are produced. This value, having been duly ascertained and published by the superintendent of the mint and Secretary of the Treasury, became the rule in the cases and for the purposes to which according to the fair meaning of the act it was to be applied. Arthur v. Richards (N. Y. 1875) 23 Wall. 246, 257, 23 L. Ed. 95.

Under R. S. § 3564 (superseded) the value of all foreign coins were to be estimated in money of the United States by the director of the mint and proclaimed by the secretary of the treasury on the 1st of January of each year; the object being to get at the real actual value of the foreign coin in the money of the United States. Detrick v. Balfour (C. C. Cal. 1881) 8 F. 468, 471.

Under that section small masses of silver, not always uniform in size or regular in shape, like that of a hat turned upside down or of a Chinese shoe marked by an officer selected by the consensus of Chinese bankers with characters indicating the fineness and the number of taels or the weight of the silver therein, and circulated in China as the only money of account, were held coins of China, and the value of a tael of the same was a proper subject of annual estimation by the direction of the mint and a proclamation on the first day of January by the secretary of the treasury. Gordon v. Magone (C. C. N. Y. 1889) 40 F. 747, 750.

If the value of foreign coin was estimated by the director of the mint upon the basis used by him in estimating the values of other foreign coins of the same metal, proclaimed by the secretary of the treasury on the 1st day of January of any year, and was proclaimed by the secretary of the treasury during a subsequent month of the same year, the director, in the absence of any proof to the contrary, was presumed to have performed his entire duty and to have made such estimation of the value of such foreign coin at the time required by that section and the proclamation during such subsequent month by the secretary of the treasury of its value so estimated was a compliance by him with the requirements of that section. Id.

4. —— **Conclusiveness.**—The value of foreign coins, as ascertained by the estimate of the director of the mint, and proclaimed by the secretary of the treasury is conclusive upon custom house officers and importers. Hadden v. Merritt (N. Y. 1885) 5 S. Ct. 1169, 115 U. S. 25, 29 L. Ed. 333; U. S. v. Knauth (C. C. N. Y. 1896) 77 F. 599.

The valuation of foreign standard coins is as binding on collectors of customs and importers as if declared by statute, and evidence is not receivable to show that it is inaccurate. Hadden v. Merritt (N. Y. 1885) 5 S. Ct. 1169, 115 U. S. 25, 29 L. Ed. 333.

The provisions of this section and Act June 10, 1890, c. 407, § 2 (repealed) being substantially re-enactments of former laws, must be interpreted in the light of the decisions construing those former laws, and the estimate of the director of the mint as proclaimed by the Secretary of the Treasury must be held conclusive both upon the government and the importer as under the former statutes. U. S. v. Klingenberg (N. Y. 1894) 14 S. Ct. 790, 792, 153 U. S. 93, 38 L. Ed. 647.

The values of foreign coins, as annually estimated and proclaimed by the Secretary of the Treasury constitute the only lawful basis for computing the invoiced value of importations, and duties on the

latter are necessarily required to be collected on the values of foreign coins so estimated and proclaimed. (1885) 18 Op. Atty. Gen. 322.

The director of the mint is required by this section to estimate quarterly the values of such coin in circulation of the various nations of the world, and after such estimation the Secretary of the Treasury shall proclaim the same "immediately after the passage of this act, and thereafter quarterly on the first day of January, April, July, and October," and the decision of that officer as to this fact, being made in pursuance of this special statutory authority, is conclusive and not reviewable by the board of the United States general appraisers or the courts. Downs v. U. S. (C. C. A. Md. 1902) 113 F. 144, affirmed (1903) 23 S. Ct. 222, 187 U. S. 496, 47 L. Ed. 275. See, also, Cramer v. Arthur (N. Y. 1881) 102 U. S. 612, 26 L. Ed. 259; Arthur v. Richards (N. Y. 1875) 23 Wall. 246, 23 L. Ed. 95.

5. —— **Dates.**—R. S. § 3564 (superseded) did not require the secretary to take the valuation of such foreign coin as established by proclamation at the date of the entry, rather than at the date of exportation, in the estimate of the values of imported merchandise. And the secretary's proclamation of July 1, 1891, and the corresponding regulations of 1892, changing the time from the former to the latter date, were valid. Wood v. U. S. (N. Y. 1896) 72 F. 254, 18 C. C. A. 553, distinguishing Heinemann v. Arthur's Ex'rs (1887) 7 S. Ct. 446, 120 U. S. 82, 30 L. Ed. 605.

In estimating the value of foreign merchandise exported to the United States, according to the value of the currency of the country of exportation, as proclaimed quarterly by the Secretary of the Treasury, under this section, the date of the consular certification of the invoice is conclusive evidence of the date of exportation for the purpose of determining the quarter the proclamation for which is applicable. U. S. v. Lawrence, Son & Gerrish (N. Y. 1905) 137 F. 466, 69 C. C. A. 614, reversing (C. C. 1903) 127 F. 750.

Board of general appraisers has jurisdiction to review the collector's action as to the date at which the value of money is to be estimated in determining dutiable value. Wood v. U. S. (N. Y. 1896) 72 F. 254, 256, 18 C. C. A. 553.

The designation of the "first day of January," in the 1st section of Act March 3, 1873, c. 268 (superseded) as the time for the performance of the duty thereby devolved upon the Secretary of the Treasury of making proclamation of the values of foreign coins annually estimated by the Director of the Mint, was not to be regarded as directory merely, but as a limitation upon the authority of the Secretary. He was authorized and required to make such proclamation at the time designated, and at no other. (1874) 14 Op. Atty. Gen. 382.

When the value of imported merchandise is stated in the invoice in a foreign currency, the value of such currency at the time of exportation from the foreign country fixes the valuation in United States currency. U. S. v. Knauth (C. C. N. Y. 1896) 77 F. 599.

Goods were shipped from Crefeld, Germany, by rail to Rotterdam, Holland, and thence by steamer to New York. The date of exportation was unknown and the consular invoice was post-certified. Entry was made by pro forma invoice. It was held correct to convert the currency at the New York Federal Reserve Bank rate, in accordance with the direction of section 403, Emergency Tariff Act 1921 (superseded) on the date of the consular invoice, as directed by section VIII of T. D. 38742. It would have been incorrect to make the conversion as of the date of the certification of the consular invoice, as directed by this section as originally enacted since that portion of the earlier act was repealed by its omission from the revision made by the later act. Fry & Friedsam v. U. S. (1925) 12 Ct. Cust. App. 486.

Certain merchandise was purchased in Calcutta to be delivered at San Francisco, Cal., and the invoice value of the same was made out in rupees, the currency of Calcutta. The value of the rupee in the currency of the United States, on the 14th of November, 1879, the date of the contract for the goods, was, as proclaimed by the Secretary of the Treasury on the 1st day of January, 1879, 44.40 cents. The value of the rupee in the currency of the United States at the time the goods were imported and entry thereof made at the office of the collector of customs for the port of San Francisco, which was subsequent to Jan. 1, 1880, was 39.70 cents as proclaimed by the Secretary of the Treasury Jan. 1, 1880. The dutiable value of the merchandise was, therefore, ascertained by reducing the invoice valuation in rupees to the currency of the United States at the rate of the rupee at the time of the proclamation on Jan. 1, 1880—to wit, 39.70 cents per rupee. Detrick v. Balfour (C. C. Cal. 1881) 8 F. 469. See, also, U. S. v. Whitridge (Md. 1905) 197 U. S. 135, 25 S. Ct. 406, 49 L. Ed. 696.

6. **Valuation of imported merchandise.**—A proclamation of the secretary of the treasury stated the value of the florin of Austria-Hungary to be $.482, according to the gold standard, $.32 according to the silver standard, with silver the nominal standard, paper the actual standard its depreciation measured by the gold standard. Held, that a valuation of imported merchandise in florins must be reduced to United States currency on the basis of the gold standard. U. S. v. Knauth (C. C.

N. Y. 1896) 77 F. 599; U. S. v. Klingenberg (N. Y. 1894) 14 S. Ct. 790, 153 U. S. 93, 38 L. Ed. 647.

In reducing foreign standard coins to United States currency for the assessment of duties, the basis in all cases is the value of the pure metal in such coins, and not their exchange value. U. S. v. Beebe (C. C. Mass. 1902) 117 F. 670, affirmed (1903) 122 F. 762, 58 C. C. A. 562. And the secretary of the treasury has no authority to direct the liquidation of an entry for customs duties on the basis of the exchange value of the foreign coin as declared by the consular certificate. U. S. v. Beebe (C. C. Mass. 1900) 103 F. 785, affirmed (1901) 106 F. 75, 45 C. C. A. 230, and certiorari denied (1901) 21 S. Ct. 922, 180 U. S. 640, 45 L. Ed. 711.

In reducing foreign standard coins to United States currency for the assessment of duties, the basis in all cases is the value of the pure metal in such coins, and not their exchange value. This long-established rule was not changed by the proviso concerning reliquidations in this section as originally enacted where it appeared that the value of the foreign money specified in an invoice had varied at the time of the invoice more than 10 per cent. from that proclaimed by the secretary of the treasury for that quarter; and a collector was not authorized, because the consular certificate accompanying an invoice showed the current exchange value of the money of the invoice to be more than 10 per cent. greater or less than the proclaimed value for the quarter, to depart from such proclaimed value, and adopt, for the purpose of assessing the duty, the exchange value shown by the certificate. U. S. v. J. Allston Newhall & Co. (C. C. Mass. 1899) 91 F. 525, appeal dismissed (C. C. A. 1899) 92 F. 1023.

7. —— **Reliquidation.**—The reliquidation by the Secretary of the Treasury of the entry of imported gunnies at the exchange value of the invoice rupee, which was also its value as a fraction of a pound, where that value differed by more than 10 per cent. from the value of the pure metal therein, as proclaimed by him at the beginning of the quarter year, was authorized by the proviso to this section as originally enacted. U. S. v. Whitridge (Md. 1905) 25 S. Ct. 406, 407, 197 U. S. 135, 49 L. Ed. 696, reversing (1904) 129 F. 33, 64 C. C. A. 47.

The approval by the secretary of the treasury of the liquidation of an entry for customs duties by the collector of the port upon the basis of the exchange value of the foreign coin specified in the invoice, as declared in the consular certificate, did not amount to a reliquidation of the entry, under this section. U. S. v. Beebe (C. C. Mass. 1900) 103 F. 785, affirmed (1901) 106 F. 75, 45 C. C. A. 230, and certiorari denied (1901) 21 S. Ct. 922, 180 U. S. 640, 45 L. Ed. 711.

Where, assuming to act under this section, the secretary directed a collector of customs to reliquidate on the basis of the exchange or commercial value of a certain foreign coin, and not of the metallic value, it was held, that he went beyond his authority, and that the action of the collector pursuant to such direction might be reviewed by the board of general appraisers and the courts, under sections 14 and 15, Customs Administrative Act June 10, 1890, c. 407, 26 Stat. 137, 138 (repealed). Stone v. Whitridge, White & Co. (Md. 1904) 129 F. 33, 64 C. C. A. 47, reversed on other grounds U. S. v. Whitridge (1905) 25 S. Ct. 406, 197 U. S. 135, 49 L. Ed. 696.

An order for reliquidation of an entry, made by the secretary of the treasury under this section, upon evidence satisfactory to him, based on the required difference between the pure-metal value of the foreign money specified in the invoice and the proclaimed value, was conclusive, and the action of the collector thereunder was not reviewable by the board of general appraisers or the courts; but where the secretary acted under an erroneous construction of the statute, and beyond the scope of the authority conferred on him by the proviso, by adopting as the basis of the reliquidation the exchange value of the foreign coin, instead of the pure-metal value, whereby the duties were increased, the question arising upon such reliquidation was one of law, and not of fact, and upon seasonable protest by the importer the action of the collector was reviewable by the board of general appraisers and the courts, under sections 14 and 15 of the customs administrative Act of 1890 (repealed). U. S. v. Beebe (C. C. Mass. 1902) 117 F. 670, affirmed (1903) 122 F. 762, 58 C. C. A. 562.

The reason for the former proviso to this section was to be found in the numerous violent fluctuations in the market value of silver which had taken place during the preceding two years; and the word "money," as used therein, meant "coin," upon the bullion value of which the quarterly proclamations provided for by the preceding part of the section were based, and the proviso did not authorize the Secretary to order the reliquidation of an entry because the currency or legal-tender value of the Indian rupee, in which the invoice value was expressed, was more or less, by more than 10 per centum, than the bullion value as fixed by the proclamation, based on the market value of the silver coins, which constituted the only money of account in India expressed in rupees. U. S. v. Lucius Beebe & Sons (Mass. 1903) 122 F. 762, 58 C. C. A. 562, affirming (C. C. 1902) 117 F. 670.

A collector of customs was not respon-

sible for the action of the Secretary of the Treasury in ordering reliquidation under this section; and he was not liable to importers where he followed instructions issued by the Secretary under said section. Gulbenkian v. Stranahan (C. C. N. Y. 1907) 158 F. 836.

The Secretary of the Treasury had authority under this section as originally enacted to direct reliquidation of certain entries covering imported merchandise, upon the basis of the rate of exchange in this country for the foreign currency specified in the invoice when the value of such currency at the prevailing rate was at least 10 per cent. less than the proclaimed value (1915) 30 Op. Atty. Gen. 450.

8. —— **Impairment of rights.**—The importer's right to have a proper liquidation by the collector in the first instance, which right was fixed by the protest, was held not affected by subsequent action of the secretary. U. S. v. Beebe (Mass. 1901) 106 F. 75, 45 C. C. A. 230, affirming (C. C. 1900) 103 F. 785, and certiorari denied (1901) 21 S. Ct. 922, 180 U. S. 640, 45 L. Ed. 711.

Rights of the Secretary, conferred by this section, were held not impaired by his previous acquiescence in the importer's protest. Gulbenkian v. Stranahan (C. C. N. Y. 1907) 158 F. 836.

9. **Depreciated currency (R. S. § 2903).**—Deductions should be allowed from nominal value of imports for foreign depreciated currency. Loewenstein v. Maxwell (C. C. N. Y. 1852) Fed. Cas. No. 8,462; Alsop v. Maxwell (C. C. N. Y. 1853) Fed. Cas. No. 263; Alsop v. Maxwell (C. C. N. Y. 1856) Fed. Cas. No. 264.

As to power of President under R. S. § 2903 (repealed) to fix an arbitrary value for foreign currency, without regard to its intrinsic value, see De Forest v. Redfield (C. C. N. Y. 1860) Fed. Cas. No. 3,746.

Proclamation and certificate of the consul conclusive, and governed by the regulations in force at the time. See Cramer v Arthur (N. Y. 1880) 102 U. S. 612, 26 L. Ed. 259.

As to duty of importer to make out a case in the manner indicated in the Treasury regulations entitling him to a valuation at the reduced amount before he can recover, see Cousinery v. Schell (C. C. N. Y. 1887) 34 F. 272, 275.

10. —— **Consular certificates.**—An importer was not entitled to an allowance for depreciation of the Austrian currency, unless his invoice was accompanied by a consular certificate of the value of such currency. Rich v. Maxwell (C. C. N. Y. 1853) Fed. Cas. No. 11,759; Dutilh v. Maxwell (C. C. N. Y. 1853) Fed. Cas. Nos. 4,207, 4,208.

The presentation of the consular certificate subsequent to payment of the duties was ineffectual. Dutilh v. Maxwell (C. C. N. Y. 1853) Fed. Cas. No. 4,208.

The collector need not demand such certificate, but it must be offered by the importer, or a bond to produce it. Rich v. Maxwell (C. C. N. Y. 1853) Fed. Cas. No. 11,759.

In the case of importations about a month apart, held sufficient where a consular certificate was presented with the first importation only. Reynolds v. Maxwell (C. C. N. Y. 1853) Fed. Cas. No. 11,731.

A consular certificate as to the value of foreign currency, attached to an invoice, might be contradicted by the importer. De Forest v. Redfield (C. C. N. Y. 1860) Fed. Cas. No. 3,746.

The consular certificate as to depreciated currency provided for by paragraph 692, Consular Regulations 1896, amended 1916, and R. S. § 2903 (repealed), and Articles 205 and 621, Customs Regulations 1915, was conclusive as to the extent of the depreciation but not as to whether the goods were purchased with such depreciated currency or as to whether they were purchased at the price named in the invoice or certificate. U. S. v. Tiffany (1920) 10 U. S. Cust. App. 247.

The consular certificate of depreciated currency has no bearing where the invoice stated the value in United States dollars and in Standard French Coin francs. Cablat v. U. S. (1922) 11 Ct. Cust. App. 304.

11. **Value of pound sterling (R. S. § 3565).**—In estimating freight, expressed in dollars, on goods shipped to England, the pound sterling is to be reckoned at its mercantile value in dollars in England. Jelison v. Lee (C. C. Mass. 1847) Fed. Cas. No. 7,256.

Under R. S. § 3565 (repealed), in an action on a note payable in pounds sterling, it was not necessary to aver or prove the value of such pound in money of the United States, but the court would give judgment for the value of the contents of the note in money of the United States according to the ratio prescribed by the statute. King v. Hamilton (C. C. Or. 1882) 12 F. 478, 480.

Where it became necessary, in executing a contract made in the United States, to ascertain the equivalent in United States currency of a sum of money expressed in British currency, the true and only mode, where none was expressed in the contract, was to count the pound sterling as equivalent to $4.8665, as fixed by R. S. § 3565 (repealed). The so-called "current rate of exchange" between New York and London did not govern. Murphy v. Kastner (1892) 24 A. 564, 50 N. J. Eq. 214.

A judgment on a bill of exchange, drawn in London and payable there in pounds sterling, which judgment must

be expressed in United States money, was to be computed, not by the par of exchange as fixed by this section and R. S. § 3565 (repealed), but by the rate of exchange at the time judgment was entered. Liberty Nat. Bank of New York v. Burr (D. C. Pa. 1921) 270 F. 251.

12. **Value of Brementhaler.**—Under the act of March 3, 1843, the value of the Brementhaler of 72 grotes, at the custom house, was fixed at 71 cents. Roosevelt v. Maxwell (C. C. N. Y. 1856) Fed. Cas. No. 12,034. See, also, Corkle v. Maxwell (C. C. N. Y. 1856) 3 Blatchf. 413, 6 Fed. Cas. No. 3,231.

13. **Money in which judgment expressed.**—A federal court has been held without authority to render a judgment for a sum in money of a foreign country, or otherwise than in money of the United States. Frontera Transportation Co. v. Abaunza (C. C. A. La. 1921) 271 F. 199.

§ 373. Recoinage of foreign coins. All foreign gold and silver coins received in payment for moneys due to the United States shall, before being issued in circulation, be coined anew. (R. S. § 3566.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 9, 1793, c. 5, § 3, 1 Stat. 301; Act Feb. 21, 1857, c. 56, § 2, 11 Stat. 163.

§ 374. Spanish and Mexican coins. The pieces commonly known as the quarter, eighth, and sixteenth of the Spanish pillar dollar, and of the Mexican dollar, shall be receivable at the Treasury of the United States, and its several offices, and at the several post offices and land offices, at the rates of valuation following: The fourth of a dollar, or piece of two reals, at 20 cents; the eighth of a dollar, or piece of one real, at 10 cents; and the sixteenth of a dollar, or half real, at 5 cents. (R. S. § 3567.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 21, 1857, c. 56, § 1, 11 Stat. 163.

Cross-References

Debts due the United States are payable in gold or silver coins of the United States, by section 199 of this title.

Treasury notes are payable to creditors of the United States, by section 202 of this title.

Hawaiian silver coins are receivable in payment of all dues to the government of the Territory of Hawaii and of the United States, by section 513 of Title 48, Territories and Insular Possessions.

The Mexican silver dollar in use in the Philippine Islands and the silver coins issued by the Spanish government for use in said Islands are receivable for public dues for a limited time, by section 1155 of Title 48, Territories and Insular Possessions.

Notes of Decisions

1. **Spanish pistareen.**—There being no such part of a dollar as a twenty-cent piece, or fifth of a dollar, the Spanish "pistareen," the average value of which by weight was between twenty-two and one-fourth and twenty-two and one-half cents each, and the average value by assays at the mint of the United States was nineteen cents and seven mills, and then in circulation at twenty cents, was not a coin made current by law. U. S. v. Gardner (N. J. 1836) 10 Pet. 618, 9 L. Ed. 556.

§ 375. Same; transmission for recoinage. The Director of the Mint, with the approval of the Secretary of the Treasury, may prescribe such regulations as are necessary and proper, to secure the transmission of the coins mentioned in section 374 of this title to the mint for recoinage, and the return or distribution of the proceeds thereof, when deemed expedient, and may prescribe such forms of account as are appropriate and applicable to the circumstances. The expenses incident to such transmission or distribution, and of re-

coinage, shall be charged against the account of silver profit and loss, and the net profits, if any, shall be paid, from time to time, into the Treasury. (R. S. § 3568; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249.)

Historical Note

This is R. S. § 3568 (Act Feb. 21, 1857, c. 56, § 2, 11 Stat. 163) as amended by Act Feb. 27, 1877, c. 69, § 1, cited to the text.

The amendment substituted the word "return" for "turn."

Cross-References

Recoinage of Hawaiian silver coins into United States subsidiary silver coins is provided for by section 513 of Title 48, Territories and Insular Possessions.

Recoinage of the silver coins in or received by the Treasury of the government of the Philippine Islands into the coins provided for use in said Islands is authorized by section 1149 of Title 48.

§ 376. Commemorative coins; laws applicable. All laws in force relating to the gold coins and subsidiary silver coins of the United States and the coining or striking of the same, regulating and guarding the process of coinage, providing for the purchase of material and for the transportation, distribution, and redemption of the coins, for the prevention of debasement or counterfeiting, for security of the coins, or for any other purposes, whether said laws are penal or otherwise, shall, so far as applicable, apply to the silver 50-cent pieces coined under authority of law and in such numbers and under the circumstances as authorized by law in commemoration of the one hundredth anniversaries of the admission of the States of Illinois, Maine, Alabama, and Missouri, into the Union; the seventy-fifth anniversary of the admission of the State of California into the Union; the three hundredth anniversary of the landing of the Pilgrims; the one hundredth anniversary of the enunciation of the Monroe doctrine; the three hundredth anniversary of the settling of New Netherland, the Middle States, in 1624, by Walloons, French and Belgian Huguenots; the one hundred and fiftieth anniversary of the Battle of Lexington and Concord; the one hundredth anniversary of the founding of Fort Vancouver by the Hudson Bay Company, State of Washington, and the commencement of the work of carving on Stone Mountain, in the State of Georgia, a monument to the valor of the soldiers of the South, and in memory of Warren G. Harding, and shall, so far as applicable, apply to the Grant memorial gold dollar and the Grant memorial silver half dollar struck in commemoration of the centenary of the birth of Ulysses S. Grant. (June 1, 1918, c. 91, §§ 1, 2, 40 Stat. 594; May 10, 1920, c. 176, §§ 1, 2, 41 Stat. 595; May 10, 1920, c. 177, §§ 1, 2, 41 Stat. 595; May 12, 1920, c. 182, §§ 1, 2, 41 Stat. 597; Mar. 4, 1921, c. 153, §§ 1, 2, 41 Stat. 1363; Feb. 2, 1922, c. 45, 42 Stat. 362; Jan. 24, 1923, c. 38, §§ 1–3, 42 Stat. 1172, 1173; Feb. 26, 1923, c. 113, §§ 1–3, 42 Stat. 1287; Mar. 17, 1924, c. 58, §§ 1–3, 43 Stat. 23; Jan. 14, 1925, c. 79, §§ 5, 6, 43 Stat. 749; Feb. 24, 1925, c. 302, §§ 2, 3,* 43 Stat. 966.)

* "2, 3" should be "2–4."

Historical Note

This section is a combination of the various statutes cited to the text, each of which related to one of the commemorative coins mentioned.

Provisions for the coinage, issuance, etc., of such coins, were evidently omitted as temporary.

Provisions making them legal tender are incorporated in section 461 of this title.

Further provisions of Act Feb. 24, 1925, c. 302, cited to the text, are incorporated in sections 378 and 379 of this title.

§ 377. Gold $2.50 pieces and silver 50-cent pieces in commemoration of the one hundred and fiftieth anniversary of the signing of Declaration of Independence. (a) In commemoration of the one hundred and fiftieth anniversary of the signing of the Declaration of Independence there shall be coined at the mints of the United States gold $2.50 pieces to the number of not more than two hundred thousand and silver 50-cent pieces to the number of not more than one million, such coins to be of the standard troy weight, composition, diameter, device, and design as shall be fixed by the Director of the Mint, with the approval of the Secretary of the Treasury, and such coins shall be legal tender in any payment to the amount of their face value.

(b) All laws in force relating to the gold coins and subsidiary silver coins of the United States and the coining or striking of the same, regulating and guarding the process of coinage, providing for the purchase of material, and for the transportation, distribution, and redemption of the coins, for the prevention of debasement or counterfeiting, for security of the coins, or for any other purposes, whether such laws are penal or otherwise, shall, so far as applicable, apply to the coinage herein authorized: *Provided*, That the United States shall not be subject to the expense of making the necessary dies and other preparation for this coinage.

(c) The coins authorized by this section shall be issued only to the authorized officers of the Sesquicentennial Exhibition Association, and in such numbers and at such times as they shall request, upon payment by such officers, for and on behalf of such association, of the par value of such coins. (Mar. 3, 1925, c. 482, § 4, 43 Stat. 1254.)

Historical Note

This was section 4 of a resolution entitled a "Joint Resolution providing for the cooperation of the United States in the sesquicentennial exhibition commemorating the signing of the Declaration of Independence, and for other purposes," cited to the text.

Cross-References

The provision of this section making the coins therein mentioned legal tender is also set forth in section 461, paragraph 2, of this title.

Paragraph (b) of this section seems to be also set forth in section 379 of this title.

§ 378. Silver 50-cent pieces in commemoration of one hundred and fiftieth anniversary of Battle of Bennington. In commemoration of the one hundred and fiftieth anniversary of the Battle of Bennington and the independence of Vermont there shall be coined in the mints of the United States silver 50-cent pieces to the number of forty thousand, such 50-cent pieces to be of the standard troy weight, composition, diameter, device, and design as shall be fixed by the Director of the Mint, with the approval of the Secretary of the Treasury, which said 50-cent pieces shall be legal tender in any payment to the amount of their face value. (Feb. 24, 1925, c. 302, § 1, 43 Stat. 965.)

Historical Note

This section was the first section of an act entitled "An act to authorize the coinage of silver 50-cent pieces in commemoration of the one hundred and fiftieth anniversary of the battle of Bennington and the independence of Vermont, in commemoration of the seventy-fifth anniversary of the admission of California into the Union, and in commemoration of the one hundredth anniversary of the founding of Fort Vancouver, state of Washington," cited to the text.

Cross-References

The portion of this section making the coins therein mentioned legal tender is also covered by paragraph 1 of section 461 of this title.

Sections 2 and 3 of the Act cited to the text, and section 4, so far as it applied to the coins mentioned in sections 2 and 3, are incorporated in section 376 of this title. Section 4, so far as it applied to the coins mentioned in this section, is incorporated in section 379 of this title.

§ 379. Laws applicable to coins authorized by sections 377 and 378. All laws in force relating to the gold and subsidiary silver coins of the United States and the coining or striking of the same, regulating and guarding the process of coinage, providing for the purchase of material and for the transportation, distribution, and redemption of coins, for the prevention of debasement or counterfeiting, for security of the coin, or for any other purposes, whether said laws are penal or otherwise, shall, so far as applicable, apply to the coinage authorized by sections 377 and 378 of this title: *Provided*, That the United States shall not be subject to the expense of making the necessary dies and other preparations for this coinage. (Feb. 24, 1925, c. 302, § 4, 43 Stat. 966; Mar. 3, 1925, c. 482, § 4, 43 Stat. 1254.)

Historical Note

This is a combination of the sections cited to the text each of which related to the coins authorized by the act of which it was part.

Cross-References

The provisions of Act March 3, 1925, c. 482, § 4, cited to the text, are also set forth in section 377 of this title.

See, also, cross-references under section 378 of this title.

CURRENCY

§ 401. United States notes. United States notes shall be of such denominations, not less than $1, as the Secretary of the Treasury may prescribe, shall not bear interest, shall be payable to bearer, and shall be in such form as the Secretary may deem best. (R. S. § 3571.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 25, 1862, c. 33, § 1, 12 Stat. 345; Act July 11, 1862, c. 142, § 1, 12 Stat. 532; Res. Jan. 17, 1863, No. 9, 12 Stat. 822; Act March 3, 1863, c. 73, § 3, 12 Stat. 710.

Special provisions relating to particular issues of United States notes were made by the acts authorizing such issues.

Cross-References

The amount of United States notes outstanding, and to be used as part of the circulating medium, is not to exceed $382,000,000, by section 402 of this title.

The further cancellation or retirement of United States legal-tender notes is forbidden by section 404 of this title.

The faith of the United States is pledged to the payment in coin or its equivalent of United States notes, by section 731 of this title.

Provisions concerning the redemption of United States notes and Treasury notes are contained in sections 408 and 412 of this title.

United States notes of specified denominations may be issued whenever outstanding silver certificates are insufficient to meet the public demand, in which case notes of higher denominations are to be retired and canceled, under section 403 of this title.

The issue, redemption, etc., of gold certificates to be issued on deposits of gold coin or bullion, are provided for by sections 428 to 430 of this title.

The issue, redemption, legal-tender quality, cancellation, etc., of silver certificates to be issued on deposits of silver coin, are provided for by sections 405 and 406 of this title.

The issue of one year gold notes bearing interest, for the purpose of maintaining the parity of the coinage and to strengthen the gold reserve, is authorized by section 409 of this title.

Notes of Decisions

1. **Meaning of "dollar."**—In Thompson v. State (1921) 90 Tex. Cr. 125, 234 S. W. 406, this section was referred to in connection with a holding that a charge of the felonious taking of "six hundred dollars" implied that money of the United States of America was taken.

§ 402. Limitation of amount of United States notes in circulation. The amount of United States notes outstanding and to be used as a part of the circulating medium, shall not exceed the sum of $382,000,000, which said sum shall appear in each monthly statement of the public debt, and no part thereof shall be held or used as a reserve. (June 20, 1874, c. 343, § 6, 18 Stat. 124.)

Editorial comment.—This section seems to be modified, if not superseded, by Act Jan. 14, 1875, c. 15, § 3, 18 Stat. 296, providing for the redemption of legal tender United States notes until there should be outstanding the sum of $300,000,000 of such notes, and no more, and section 404 of this title prohibiting the further cancellation or retirement of United States legal tender notes.

§ 403. Issue of United States notes of small denominations and retirement of notes of higher denominations. Whenever and so long as the outstanding silver certificates of the denominations of $1, $2, and $5, issued under the provisions of section 406 of this title, shall be, in the opinion of the Secretary of the Treasury, insufficient to meet the public demand therefor, he may issue United States notes of the denominations of $1, $2, and $5, and upon the issue of United States notes of such denominations an equal amount of United States notes of higher denominations shall be retired and canceled: *Provided, however,* That the aggregate amount of United States notes at any time outstanding shall remain as fixed by law: *And provided further,* That nothing in this section, or section 429 of this title or sections 90 and 178 of Title 12 shall be construed as affecting the right of any national bank to issue one-third in amount of its circulating notes of the denomination of $5, as provided by law. (Mar. 4, 1907, c. 2913, § 2, 34 Stat. 1289.)

§ 404. Further cancellation or retirement of legal-tender notes prohibited. *It shall not be lawful for the Secretary of the Treasury or other officer under him to cancel or retire any more of the United States legal-tender notes. And when any of said notes may be redeemed or be received into the Treasury under any law from any source whatever and shall belong to the United States, they shall not be retired canceled or destroyed, but they shall be reissued and paid out again and kept in circulation: *Provided,* That nothing herein shall prohibit the cancellation and destruction of mutilated notes and the issue of other notes of like denomination in their stead, as provided by law. (May 31, 1878, c. 146, 20 Stat. 87.)

* "Except as provided in sections 403 and 406 of this title" should be inserted before the words "It shall not be lawful."

Historical Note

This was an act entitled "An act to forbid the further retirement of United States legal-tender notes." A provision thereof, omitted here, repealed conflicting acts and parts of acts.

R. S. § 3579, authorizing the reissuance

of United States notes returned to the Treasury, section 3582, suspending the authority of the Secretary of the Treasury to make any reduction of the currency by retiring and canceling United States notes, and a provision of Act Jan. 14, 1875, c. 15, § 3, 18 Stat. 296, providing for the redemption of legal tender United States notes, upon the issuance of circulating notes to any national banking association, until there should be outstanding $300,000,000 of such notes, and no more, were probably omitted from the Code as superseded by this section.

At the time of the passage of this act, the amount of legal-tender notes outstanding was $346,681,016.

The appropriations for engraving and printing, made by the annual appropriation acts for each fiscal year are followed by provisions that no portion of the sum appropriated shall be expended for printing United States notes or treasury notes of larger denomination than those that may be canceled or retired, except in so far as such printing may be necessary in executing the requirements of the Parity Act of March 14, 1900, c. 41 (see section 408 of this title). The provisions for the fiscal year 1928 were by Act Jan. 26, 1927, c. 58, 44 Stat. 1039.

Cross-References

See section 403 of this title, authorizing the issue of United States notes of small denominations, and providing for the retirement and cancellation of an equal amount of United States notes of higher denominations, whenever outstanding silver certificates of small denominations are insufficient to meet the public demand.

And see, also, section 406 of this title, providing for the retirement and cancellation of United States notes of less denomination than $10, and the re-issuance of notes of $10 and upwards in substitution therefor, upon the retirement of silver certificates of higher denomination than $10 and the substitution therefor of certificates of denominations of $10 or less.

Notes of Decisions

1. **Validity.**—This section is constitutional, and a tender in reissued notes is a legal tender. Juilliard v. Greenman (N. Y. 1884) 110 U. S. 421, 437, 4 S. Ct. 122, 28 L. Ed. 204.

2. **Construction.**—The manifest intention of this section is that the notes which it directs after having been redeemed shall be reissued and kept in circulation shall retain their original quality of being legal tender. Legal Tender Cases (1884) 4 S. Ct. 122, 124, 110 U. S. 421, 28 L. Ed. 204.

3. **Duties of Secretary of Treasury.**—In the Treasury Department the Secretary represents the government. His acts and his omissions, within the line of his official duties, are the acts or omissions of the government itself; and in all commercial transactions his official negligence will be deemed to be the negligence of the government. He is specially charged with the duty of retiring treasury notes by exchange, payment, or purchase; and he is the only agent authorized to act for the government in that behalf. All who deal with the government with respect to these notes are presumed to know his exclusive authority; for it is a public law. Until such time, therefore, as he has acted, or in due course of business ought to have acted, there can have been no such laches as will charge the government. He is presumed to act officially only in his department. His attention can only be demanded after the presentation of the notes at that place. It was there that the accounts and records of the issues and redemptions under the early laws were by statute required to be kept, and that is the appropriate place for keeping such similar records as the Secretary of the Treasury may by regulations prescribe, under the later laws, to protect against fraud and loss. Cooke v. U. S. (N. Y. 1875) 91 U. S. 389, 23 L. Ed. 237.

4. **R. S. § 3582.**—See the following cases under the Act of April 12, 1866, 14 Stat. 31, c. 39, § 1 (R. S. § 3582, superseded) prior to the revision of the statutes: U. S. v. Cooke (D. C. N. Y. 1870) 4 Ben. 376, 25 Fed. Cas. No. 14,854, affirmed (C. C. 1874) 12 Blatchf. 43, 6 Fed. Cas. No. 3,178, and reversed (1875) 91 U. S. 389, 23 L. Ed. 237.

§ 405. Silver certificates; issuance for silver dollars. Any holder of silver dollars coined under the Act of February 28, 1878, chapter 20 (Twentieth Statutes, page 26), may deposit the same with the Treasurer or any depositary of the United States designated for that purpose, in sums not less than $10, and receive therefor certificates of the denominations hereinafter in this chapter prescribed. The coin deposited for or representing certificates heretofore or hereafter issued shall be retained in the Treasury for the payment of the same on demand. Said certificates heretofore or hereafter issued shall be

receivable for customs, taxes, and all public dues, and, when so received, may be reissued. (Feb. 28, 1878, c. 20, § 3, 20 Stat. 26; Mar. 3, 1887, c. 362, 24 Stat. 515.)

Editorial comment.—It has been suggested that the word "coined" in the second line should be "authorized" and that the words "heretofore or hereafter issued" (lines 7 and 8) are unnecessary.

Historical Note

This was part of an Act of Feb. 28, 1878, providing for the coinage of standard silver dollars. The provisions authorizing such coinage were contained in section 1, and have apparently been omitted as superseded. See the historical note to section 316 of this title.

Upon incorporation of this section into the Code, the words "or any assistant treasurer of the United States" were evidently changed to "any depositary of the United States designated for that purpose" to conform to section 476 of this title. A provision concerning the denominations of the certificates authorized was evidently regarded as superseded by later provisions. See section 406 of this title.

Act March 3, 1887, c. 362, cited to the text, in authorizing the issuance of silver certificates in denominations of one, two, and five dollars, provided that the certificates therein authorized should be receivable, redeemable, and payable in like manner and for like purposes as was provided by Act Feb. 28, 1878.

Notes of Decisions

1. In general.—The Secretary of the Treasury has authority to issue silver certificates in exchange for all standard silver dollars which have been properly coined and put into circulation and are offered at the Treasury for exchange in sums not less than $10. Whether such silver represents profit or seigniorage is immaterial. (1891) 20 Op. Atty. Gen. 124.

2. Trade dollar.—The United States Treasurer is not authorized to receive "trade dollars" at par in exchange for silver certificates under this section. Nor are such dollars receivable at par in payment of public dues. (1886) 18 Op. Atty. Gen. 417.

§ 406. Denominations of silver certificates. Silver certificates shall be issued only of denominations of $10 and under, except that not exceeding in the aggregate 10 per centum of the total volume of said certificates, in the discretion of the Secretary of the Treasury, may be issued in denominations of $20, $50, and $100; and silver certificates of higher denomination than $10, except as herein provided, shall, whenever received at the Treasury or redeemed, be retired and canceled, and certificates of denominations of $10 or less shall be substituted therefor, and after such substitution, in whole or in part, a like volume of United States notes of less denomination than $10 shall from time to time be retired and canceled, and notes of denominations of $10 and upward shall be reissued in substitution therefor, with like qualities and restrictions as those retired and canceled. (Mar. 14, 1900, c. 41, § 7, 31 Stat. 47.)

Historical Note

Provisions of Act Feb. 28, 1878, c. 20, § 3, 20 Stat. 26, and Act March 3, 1887, c. 362, 24 Stat. 515, concerning the denominations of silver certificates, and provisions of the section last cited concerning the issuance of small denominations in lieu of certificates of larger denominations or in exchange therefor, were evidently omitted from the Code as superseded by this section.

Cross-References

Whenever the oustanding silver certificates of denominations of one, two, and five dollars, issued under this section, are insufficient to meet the public demand therefor, the issue of United States notes of such denominations, and the retirement of an equal amount of United States notes of higher denominations are authorized by section 403 of this title.

§ 407. Redemption of fractional currency. Fractional currency presented for redemption shall be redeemed in any moneys in the

Treasury not otherwise appropriated, and, when so redeemed, shall be destroyed. (June 21, 1879, c. 34, § 3, 21 Stat. 30; July 22, 1876, No. 17, § 1, 19 Stat. 215.)

Historical Note

The provision of this section that fractional currency when redeemed shall be destroyed is from Res. July 22, 1876, No. 17, § 1, cited to the text. The rest of the section is from Act June 21, 1879, c. 34, § 3, also cited to the text. Other provisions of section 1 of the Resolution of July 22, 1876, authorizing the issuance of silver coin in exchange for legal tender notes, and requiring such notes to be kept as a special fund and re-issued only upon the retirement of a like sum of fractional currency, were probably omitted from the Code as superseded by the Act of June 21, 1879. The following provisions were doubtless omitted for the same reasons; Act Jan. 14, 1875, c. 15, § 1, 18 Stat. 296, providing for the coinage of ten, twenty-five and fifty cent pieces, and issuance thereof in redemption of fractional currency, or the issuance thereof through mints, sub-treasuries, etc., and the redemption of an equal amount of fractional currency; Act April 17, 1876, c. 63, § 2, 19 Stat. 33, also providing for the redemption of fractional currency by the issuance of specified silver coins, and providing that the fractional currency so redeemed should be held as part of the sinking fund; Res. July 22, 1876, No. 17, § 3, 19 Stat. 215, authorizing the manufacture and issuance of an additional amount of subsidiary silver coin in addition to that authorized to be issued in redemption of fractional currency, and section 4, relative to the purchase of bullion for that purpose.

R. S. § 3572, limited the fractional currency to an amount not to exceed $50,000,000.

R. S. § 3573, prohibited the issue of fractional currency in denominations less than ten cents.

R. S. § 3574, provided for the form of the notes of the fractional currency, and that they should be receivable for postage and revenue stamps and all dues to the United States except customs, and authorized their redemption under regulations of the Secretary of the Treasury.

R. S. § 3575, authorized the Secretary of the Treasury to provide for the engraving, etc., of such notes, and their redemption when mutilated and defaced, and for the receipt of such notes in payment of debts due the United States, except customs.

These four sections were probably omitted, as obsolete.

Notes of Decisions

1. **Application of former law.**—Res. July 22, 1876, § 3 (superseded) applied alike to cases wherein the officers of the government were receiving payment of its dues and to cases wherein they were disbursing the public funds in discharge of its obligations. (1878) 16 Op. Atty. Gen. 139.

2. **Determination of amount of fractional currency outstanding.**—Under the third section of the joint resolution of July 22, 1876 (superseded) the amount of "fractional currency outstanding" was to be determined not merely by the records of the Treasury Department, which showed how much had been issued and redeemed, but also by ascertaining how much had been lost or destroyed so that it could never be presented for redemption. (1877) 15 Op. Atty. Gen. 312.

When satisfied as to the amount lost or destroyed, the Secretary of the Treasury had authority to issue an equal amount of subsidiary silver coin to replace it, subject to this restriction, viz. that the aggregate amount of subsidiary silver coin put in circulation, together with the amount of fractional currency outstanding, was not at any time to exceed $50,000,000. Id.

§ 408. Gold reserve; redemption of United States notes and Treasury notes; reissue of redeemed notes. United States notes, and Treasury notes issued under the Act of July 14, 1890 (26 Stat. 289), when presented to the Treasury for redemption, shall be redeemed in gold coin of the standard fixed in section 314 of this title, and in order to secure the prompt and certain redemption of such notes as herein provided it shall be the duty of the Secretary of the Treasury to set apart in the Treasury a reserve fund of $150,000,000 in gold coin and bullion, which fund shall be used for such redemption purposes only, and whenever and as often as any of said notes shall be redeemed from said fund it shall be the duty of the Secretary of the Treasury to use said notes so redeemed to restore and maintain such reserve

fund in the manner following, to wit: First, by exchanging the notes so redeemed for any gold coin in the general fund of the Treasury; second, by accepting deposits of gold coin at the Treasury or at any designated depositary in exchange for the United States notes so redeemed; third, by procuring gold coin by the use of said notes, in accordance with the provisions of section 734 of this title. If the Secretary of the Treasury is unable to restore and maintain the gold coin in the reserve fund by the foregoing methods, and the amount of such gold coin and bullion in said fund shall at any time fall below $100,000,000, then it shall be his duty to restore the same to the maximum sum of $150,000,000 by borrowing money on the credit of the United States, and for the debt thus incurred to issue and sell coupon or registered bonds of the United States, in such form as he may prescribe, in denominations of $50 or any multiple thereof, bearing interest at the rate of not exceeding 3 per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after one year from the date of their issue, and to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; and the gold coin received from the sale of said bonds shall first be covered into the general fund of the Treasury and then exchanged, in the manner hereinbefore provided, for an equal amount of the notes redeemed and held for exchange, and the Secretary of the Treasury may, in his discretion, use said notes in exchange for gold, or to purchase or redeem any bonds of the United States, or for any other lawful purpose the public interests may require, except that they shall not be used to meet deficiencies in the current revenues. United States notes when redeemed in accordance with the provisions of this section shall be reissued, but shall be held in the reserve fund until exchanged for gold, as herein provided; and the gold coin and bullion in the reserve fund, together with the redeemed notes held for use as provided in this section, shall at no time, exclusive of the amounts paid into said reserve fund under sections 290 and 1072 of Title 12, and under section 9 of the Act of May 30, 1908, chapter 229 (Thirty-fifth Statutes, page 550), exceed the maximum sum of $150,000,000. (Mar. 14, 1900, c. 41, § 2, 31 Stat. 45; Dec. 23, 1913, c. 6, § 7, 38 Stat. 258; Mar. 4, 1923, c. 252, Title I, § 2, 42 Stat. 1457.)

Editorial comment.—The clause "exclusive of the amounts paid into said reserve fund under sections 290 and 1072 of Title 12, and under section 9 of the Act of May 30, 1908, chapter 229 (Thirty-Fifth Statutes, page 550)" has been criticized as incorrect. See the historical note.

Another provision concerning the redemption of legal tender notes was contained in Act Jan. 14, 1875, c. 15, § 3, 18 Stat. 296, as amended by Act March 3, 1887, c. 378, § 3, 24 Stat. 560, which read in part as follows: "On and after the first day of January, anno Domini eighteen hundred and seventy-nine, the Secretary of the Treasury shall redeem in coin, the United States legal-tender notes then outstanding on their presentation for redemption, at the office of the assistant treasurer of the United States in the city of New York and the city of San Francisco, California, in sums of not less than fifty dollars."

Historical Note

This section, except the phrase, referred to in the editorial comment, is from Act March 14, 1900, c. 41, § 2, cited to the text.

Act Dec. 23, 1913, c. 6, § 7 (section 290 of Title 12, Banks and Banking) provides that the net earnings derived by the United States from Federal reserve banks shall in the discretion of the Secretary of the Treasury be used to supplement the gold reserve. Act March 4, 1923, c. 252, Title 1, § 2 (section 1072 of Title 12) contains a similar provision concerning the net earnings from Federal Intermediate Credit Banks. Act May 30, 1908 c. 229, § 9, 35 Stat. 550 (amending R. S. § 5214, but afterwards superseded and not carried into the Code) relative to taxes on the circulating notes of national banks, provided that the taxes on notes secured otherwise than by bonds of the United States should be credited and added to the reserve fund. It was evidently thought that the sums added to the gold reserve under these various provisions were in addition to the amount specified in the original text of this section.

Act Jan. 14, 1875, c. 15, § 3, 18 Stat. 296, as amended by Act March 3, 1887, c. 378, § 3, 24 Stat. 560, in addition to the provision quoted in the editorial comment, contained a provision repealing R. S. § 5177, and other provisions which were probably omitted as superseded. The provision quoted in the editorial comment was probably omitted as superseded by this section.

Cross-References

Provisions forbidding the cancellation of United States legal-tender notes, and requiring them to be reissued, are made by section 404 of this title.

Notes of Decisions

1. **Deposit of proceeds of sale of bonds.**—As to bonds sold under Act Jan. 15, 1875, c. 15, § 3 (superseded in part) see Deposit of Public Moneys (1877) 15 Op. Atty. Gen. 359.

§ 409. Additional means for maintaining parity and strengthening gold reserve. The Secretary of the Treasury may, for the purpose of maintaining the parity of all forms of money issued or coined by the United States in accordance with the provisions of section 314 of this title, and to strengthen the gold reserve, borrow gold on the security of United States bonds authorized by section 408 of this title, or for one-year gold notes bearing interest at a rate of not to exceed 3 per centum per annum, or sell the same if necessary to obtain gold. When the funds of the Treasury on hand justify, he may purchase and retire such outstanding bonds and notes. (Dec. 23, 1913, c. 6, § 26, 38 Stat. 274.)

Historical Note

This section was part of the Federal Reserve Act of Dec. 23, 1913.

Provisions of the original text of the section, omitted here, repealed inconsistent and superseded provisions and provided that nothing in that Act should be construed to repeal the parity provisions of Act March 14, 1900 (see section 408 of this title.)

Cross-References

Accounts relating to reserve fund, see section 146 of this title.

§ 410. Treasury notes as legal tender; national bank reserve fund. Treasury notes shall be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated in the contract, and shall be receivable for customs, taxes, and all public dues. Such notes, when held by any national banking association, may be counted as a part of its lawful reserve. (July 14, 1890, c. 708, § 2, 26 Stat. 289; Mar. 14, 1900, c. 41, § 5, 31 Stat. 47.)

Editorial comment.—It has been suggested that the words "issued under the Act of July 14, 1890" should be inserted after the word "notes" near the beginning of this section.

Historical Note

This section was part of the Sherman Purchase of Silver Act of July 14, 1890, the first section of which authorized the purchase of silver bullion, and the issuance of Treasury notes in payment therefor. So much of the act as directed the

purchase of silver bullion and the payment therefor in Treasury notes was repealed by Act Nov. 1, 1893, c. 8, 28 Stat. 4.

The portions of the original text of this section concerning the redemption and reissue of Treasury notes were probably omitted as superseded. See sections 408 and 411 of this title.

Cross-References

The provisions of the first sentence of this section are also set forth, in part, in section 453, of this title, and the provisions of the second sentence, in section 145 of Title 12, Banks and Banking.

Notes of Decisions

See the notes to section 145 of Title 12, Banks and Banking.

§ 411. Cancellation of Treasury notes on coinage of silver dollars and issue of silver certificates. Treasury notes whenever received into the Treasury, either by exchange in accordance with the provisions of section 408 of this title or in the ordinary course of business, shall be retired and canceled with standard silver dollars coined under the provisions of the Acts of July 14, 1890 (Twenty-sixth Statutes, page 289), and June 13, 1898 (Thirtieth Statutes, page 467), from bullion purchased under the Act of July 14, 1890 (Twenty-sixth Statutes, page 289), and upon the cancellation of Treasury notes silver certificates shall be issued against the silver dollars so coined. (Mar. 14, 1900, c. 41, § 5, 31 Stat. 47.)

Historical Note

Prior to its incorporation into the Code, this section read as follows:

"It shall be the duty of the Secretary of the Treasury, as fast as standard silver dollars are coined under the provisions of the Acts of July fourteenth, eighteen hundred and ninety, and June thirteenth, eighteen hundred and ninety-eight, from bullion purchased under the Act of July fourteenth, eighteen hundred and ninety, to retire and cancel an equal amount of Treasury notes whenever received into the Treasury, either by exchange in accordance with the provisions of this Act or in the ordinary course of business, and upon the cancellation of Treasury notes silver certificates shall be issued against the silver dollars so coined."

It was apparently thought that the section had become obsolete so far as it required things to be done as fast as silver dollars were coined, but was still in force to the extent indicated by the present text.

Act July 14, 1890, 26 Stat. 289, mentioned in the text was repealed, so far as it provided for the purchase of silver bullion, by Act Nov. 1, 1893, c. 8, 28 Stat. 4. The provisions of that act and Act June 13, 1898, c. 448, § 34, 30 Stat. 467, concerning the coinage of silver dollars were apparently omitted from the Code as executed or obsolete.

§ 412. Redemption of Treasury notes with silver dollars. Silver dollars coined in accordance with the provisions of the Act of June 13, 1898 (chapter 448, section 34, Thirtieth Statutes, page 467), providing for the coinage of silver dollars and the redemption of Treasury notes, shall be used for the redemption of Treasury notes issued under the Act of July 14, 1890 (chapter 708, Twenty-sixth Statutes, page 289), directing the purchase of silver bullion and the issue of Treasury notes thereon. (July 14, 1890, c. 708, § 3, 26 Stat. 289; June 13, 1898, c. 448, § 34, 30 Stat. 467.)

Historical Note

This is from Act June 13, 1898, c. 448, § 34, cited to the text, which provided for the coinage into silver dollars of the bullion purchased under Act July 14, 1890, and provided that the dollars so coined should "be used and applied in the manner and for the purposes named in said Act." The provisions of said section 34 for the coinage of such bullion into dollars was doubtless omitted from the Code as executed or obsolete.

Section 3 of Act July 14, 1890, cited to the text, directed the coinage, after July 1, 1891, of so much of the bullion

purchased under that act as might be necessary to provide for the redemption of the Treasury notes therein provided for, thus indicating that the dollars coined were to be used for that purpose.

Section 1 of Act July 14, 1890, provided for the purchase of silver bullion and the issuance of Treasury notes in payment therefor. These provisions were repealed by Act Nov. 1, 1893, c. 8, 28 Stat. 4. Provisions of section 3 of the Act of 1890 concerning the coinage of the bullion into dollars, and the provisions of section 4, relating to the determination of the quality of the bullion purchased, and the amounts of charges or deductions were probably omitted as obsolete.

Section 5 of the Act of 1890 repealed so much of Act Feb. 28, 1878, c. 20, 20 Stat. 25, as required the monthly purchase and coinage into standard silver dollars of not less than $2,000,000 nor more than $4,000,000 worth of silver bullion.

Section 7 of the act provided that the act should take effect thirty days from and after its passage.

Cross-References

Provision for the use of standard silver dollars coined under the Act of June 13, 1898, for the retirement of Treasury notes, is also made by section 411 of this title.

Notes of Decisions

1. **Issuance of silver certificates.**—The Secretary of the Treasury has authority under section 3 of Act July 14, 1890 (see historical note) and section 405 of this title, to issue silver certificates in exchange for all standard silver dollars which have been properly coined and put into circulation and are offered at the Treasury for exchange in sums not less than $10, and whether such silver represents profit or seigniorage is immaterial. (1891) 20 Op. Atty. Gen. 124.

2. **Treasury notes—Issuance.**—Under Act July 14, 1890 (repealed in part), see (1891) 20 Op. Atty. Gen. 124.

3. **—— Exchange for currency certificates.**—The Treasury notes authorized to be issued in payment for silver bullion by Act July 14, 1890 (repealed in part) were not United States notes within the meaning of Act June 8, 1872 (R. S. § 5193, repealed), and consequently were not receivable on deposit in exchange for the currency certificates authorized by that act. (1892) 20 Op. Atty. Gen. 317.

§ 413. Portraits of living persons on bonds or notes. No portrait shall be placed upon any of the bonds, securities, notes, fractional* or postal currency of the United States, while the original of such portrait is living. (R. S. § 3576.)

* The word "fractional" should probably be omitted as obsolete.

Historical Note

This section of the Revised Statutes was derived from Act April 7, 1866, c. 28, § 12, 14 Stat. 25.

Cross-References

Names of persons are required to be placed under such portraits by section 414 of this title.

Notes of Decisions

1. **Portraits of living persons on internal revenue stamps.**—In placing the portraits of living persons upon internal revenue stamps there is no infraction of the section, although their exclusion therefrom would seem to accord with the spirit of the section. (1875) 14 Op. Atty. Gen. 528.

§ 414. Names inscribed under portraits. The name of each person whose portrait shall be placed upon any of the plates for bonds, securities, notes, and silver certificates of the United States shall be inscribed below such portrait. (Mar. 2, 1889, c. 411, § 1, 25 Stat. 945.)

Historical Note

This was a proviso annexed to an appropriation for wages of plate printers in the sundry civil appropriation act for the fiscal year 1890, cited to the text.

Notes of Decisions

1. **Application of section—Postage stamps.**—Postage stamps are not "securities" of the United States within the provision. (1907) 26 Op. Atty. Gen. 231.

§ 415. Engraving and printing notes, bonds, and other securities. The work of engraving and printing notes, bonds, and other securities shall be performed at the Treasury Department, provided it can be done there as cheaply, as perfectly, and as safely. (Mar. 3, 1877, c. 105, 19 Stat. 353.)

Historical Note

This section is from provisos annexed to an appropriation for engraving and printing notes, bonds, and other securities of the United States, in the sundry civil appropriation act for the fiscal year 1878, cited to the text.

Provisos annexed to a similar appropriation in Act March 3, 1875, c. 130, § 1, 18 Stat. 373, required the notes, currency and other securities to be executed with not less than three plate printings, two of such printings to be executed by responsible, capable and experienced banknote companies or engravers, no company or establishment executing more than one printing, and the final printing and finishing to be executed in the Treasury Department. These provisions were probably omitted as temporary, or as superseded by this section.

Notes of Decisions

1. "Security."—The word "security," as used in the section, is an evidence of public debt, as a bond, or a certificate of deposit, or other subject of investment. (1898) 22 Op. Atty. Gen. 40.

When the word is used in the property sense it refers to bonds, mortgages, certificates of deposit, certificates of stock, etc. In this sense postage stamps are not investments or securities. Id.

§ 416. Machinery, materials, and employees and officers. The Secretary of the Treasury may purchase and provide all the machinery and materials, and employ such persons and appoint such officers as are necessary for the purpose of section 415 of this title. (R. S. § 3577.)

Historical Note

This section of the Revised Statutes was derived from Act July 11, 1862, c. 142, § 2, 12 Stat. 532.

A provision of the original text as to causing notes to be engraved, printed, and executed at the Treasury Department was evidently omitted as superseded by section 415 of this title.

Cross-References

Provisions relating to the Bureau of Engraving and Printing, established in the Treasury Department, are contained in chapter 5 of this title.

Notes of Decisions

1. Use by government of patented device.—Where the chief of the government bureau of printing and engraving, while employed under this law, invented a self-canceling stamp and consented to its use by the government, the government was held not bound to pay for such use, under a patent issued for the invention to his assignee. Solomons v. U. S. (1890) 137 U. S. 342, 11 S. Ct. 88, 34 L. Ed. 667, affirming (1886) 21 Ct. Cl. 479 (1887) 22 Ct. Cl. 335.

§ 417. Expenses of issuing notes. The necessary expenses of engraving, printing, preparing, and issuing the United States notes and Treasury notes shall be paid out of any money in the Treasury not otherwise appropriated; but no extra compensation for preparing, signing, or issuing such notes shall be allowed to any officer whose salary is fixed by law. (R. S. § 3578; July 22, 1876, No. 17, § 1, 19 Stat. 215.)

Editorial comment.—It has been suggested that "Jan. 14, 1875, c. 15, § 1, 18 Stat. 296" should be added to the credits to the text.

Historical Note

This is from R. S. § 3578, which was derived from Act March 3, 1863, c. 73, § 6, 12 Stat. 711; Act Dec. 23, 1857, c. 1, § 11, 11 Stat. 259; Act June 30, 1864, c. 172, § 9, 13 Stat. 221.

The words "and fractional notes" which

followed the words "Treasury notes" in the original text, were evidently omitted as obsolete. Provisions for the redemption and destruction of fractional currency were contained in Res. July 22, 1876, No. 17, § 1, cited to the text, and Act Jan. 14, 1875, c. 15, § 1, referred to in the editorial comment.

§ 418. Distinctive paper for United States securities; contracts for. The Secretary of the Treasury is authorized, in his discretion, to enter into a contract for the manufacture of distinctive paper for United States securities for a period not to exceed four years. (July 1, 1916, c. 209, § 1, 39 Stat. 277.)

Editorial comment.—The inclusion in the Code of this section and section 419 of this title has been criticized on the ground that the provisions incorporated therein were temporary but the authority granted is said to have been construed as a continuing one.

Historical Note

This was a provision of the sundry civil appropriation act for the fiscal year 1917, cited to the text.

A provision of Act June 12, 1917, c. 27, § 1, 40 Stat. 119, authorized the Secretary of the Treasury to consolidate the stock accounts of distinctive paper for United States currency and for national-bank and Federal Reserve Bank currency. It was probably omitted from the Code as temporary and executed.

Cross-References

Executive departments are prohibited from making contracts for stationery or other supplies for a longer term than one year by section 13 of Title 41, Public Contracts.

§ 419. Same; additional employees for mills. During such period as it may be necessary to operate more than one mill for the manufacture of distinctive paper, the Secretary of the Treasury is authorized to employ temporarily such employees as may be necessary at rates of pay corresponding to those of the regular employees, the compensation of such temporary employees to be a charge against the appropriation available for the distinctive paper then manufactured. (Apr. 4, 1924, c. 84, Title I, 43 Stat. 69.)

Editorial comment.—See the comment on section 418 of this title.

Historical Note

This is from the Treasury and Post Office Departments appropriation act for the year 1925, cited to the text. The "First Deficiency Act, fiscal year 1924," Act April 2, 1924, c. 81, § 1, 43 Stat. 49, contained the same provision.

§ 420. Replacing mutilated notes. When any United States notes returned to the Treasury are so mutilated or otherwise injured as to be unfit for use, the Secretary of the Treasury is authorized to replace the same with others of the same character and amounts. (R. S. § 3580.)

Historical Note

This section of the Revised Statutes was derived from Act March 17, 1862, c. 45, § 4, 12 Stat. 370.

Cross-References

By a proviso to section 404 of this title, nothing in that section is to prohibit the cancellation and destruction of mutilated notes and the issue of other notes of like denomination in their stead, as provided by law.

§ 421. Destruction of notes. Mutilated United States notes, when replaced according to law, and all other notes which by law are required to be taken up, and not reissued, when taken up, shall be destroyed in such manner and under such regulations as the Secretary of the Treasury may prescribe. (R. S. § 3581.)

Historical Note

This section of the Revised Statutes was derived from Act March 17, 1862, c. 45, § 4, 12 Stat. 370.

Cross-References

See the proviso to section 404 of this title.

The destruction of national bank notes, United States notes, etc., by maceration instead of by burning, is authorized by section 422 of this title.

§ 422. **Same.** All national bank notes, United States notes, and other obligations of the United States authorized to be destroyed may be destroyed by maceration instead of burning to ashes. The pulp from such macerated issue shall be disposed of only under the direction of the Secretary of the Treasury. (June 23, 1874, c. 455, § 1, 18 Stat. 206.)

Historical Note

This was a provision of the sundry civil appropriation act for the fiscal year 1875, cited to the text.

A provision of the original text omitted here repealed so much of sections 24 and 43 of the National Currency Act (Act June 3, 1864, c. 106, 13 Stat. 106, 112) as required national bank notes to be burned to ashes.

§ 423. **Laundering paper money.** The Secretary of the Treasury may employ such number of expert money assorters, feeders, and other employees, and expend such sums for contingent and miscellaneous items and for the purchase or construction and installation of paper-money laundering machines as may be necessary, in his judgment, to install, maintain, and operate laundering machines in the Treasury at Washington. (Aug. 26, 1912, c. 408, § 1, 37 Stat. 595.)

Historical Note

This was a provision of the deficiency appropriation act for the fiscal year 1912, cited to the text. A proviso omitted here relative to annual estimates is incorporated in paragraph (5) of section 583 of this title. Another proviso omitted as temporary made an appropriation for laundering paper money, to continue available during the fiscal year 1913.

§ 424. **Counterfeit notes to be marked.** All United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word "counterfeit," "altered," or "worthless," upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States, or of the national banks, they shall, upon presentation, redeem such notes at the face value thereof. (June 30, 1876, c. 156, § 5, 19 Stat. 64.)

Historical Note

This section was part of an act relating to receiverships of national banks, other sections of which are set forth in Title 12, Banks and Banking.

§ 425. **State taxation.** Circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency and gold, silver, or other coin shall be subject to taxation as money on hand or on deposit under the laws of any State or Territory: *Provided,* That any such taxation shall be exercised in the same manner and at the same rate that any

such State or Territory shall tax money or currency circulating as money within its jurisdiction. (Aug. 13, 1894, c. 281, § 1, 28 Stat. 278.)

Historical Note

This section and section 426 of this title were an act entitled "An act to subject to State taxation national bank notes and United States Treasury notes."

Notes of Decisions

1. Authority for state taxation.—This section does not empower state tax officials, without state legislation, to impose taxes on the securities mentioned therein. "It is not for Congress, but for the state legislature, to determine what shall be taxed. * * * The state might, therefore, tax such securities or it might decline to do so." Howard Sav. Inst. v. Newark (1899) 63 N. J. Law, 547, 44 A. 654, reversing (1899) 63 N. J. Law, 65, 42 A. 848.

2. Exemption.—Conceding that the section permits states to tax gold and silver certificates, the supplement to the New Jersey tax law of April 11, 1866 (P. L. 1866, p. 1078), by section 5, as amended by the further supplement of May 16, 1894 (P. L. 1894, p. 354), providing an exemption for "the property and bonds and other securities of the United States, and the bonds and securities of this state which are by law exempt from taxation," expresses a legislative intent to exempt from taxation the property and the bonds and securities of the United States absolutely and without qualification, since the 1866 act contained a comma between the words "state" and the following clause, but otherwise used the identical language. Howard Sav. Inst. v. City of Newark (1899) 44 A. 654, 63 N. J. Law, 547, reversing (1899) 42 A. 848, 63 N. J. Law, 65.

§ 426. **Same; national banks not affected.** The provisions of section 425 of this title shall not be deemed or held to change existing laws in respect of the taxation of national banking associations. (Aug. 13, 1894, c. 281, § 2, 28 Stat. 278.)

Historical Note

See the note to section 425 of this title.

Cross-References

As to taxation of national banks, see chapter 4 of Title 12, Banks and Banking.

§ 427. **Rules and regulations.** The Secretary of the Treasury shall make and issue from time to time such instructions and regulations to the several collectors, receivers, depositaries, officers, and others who may receive Treasury notes, United States notes, or other securities of the United States, or who may be in any way engaged or employed in the preparation and issue of the same, as he shall deem best calculated to promote the public convenience and security, and to protect the United States, as well as individuals, from fraud and loss. (R. S. § 251.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 10, 1820, c. 11, §§ 14, 15, 3 Stat. 543; Act Aug. 6, 1846, c. 84, § 5, 9 Stat. 55; Act June 30, 1864, c. 172, § 8, 13 Stat. 221; Act July 14, 1870, c. 255, § 34, 16 Stat. 271; Res. May 14, 1856, No. 9, 11 Stat. 144.

Cross-References

Portions of the original text of this section omitted here are incorporated in section 185 of Title 15, Commerce and Trade, section 66 of Title 19, Customs Duties, and section 72 of Title 26, Internal Revenue.

Notes of Decisions

See, also, the notes to section 66 of Title 19, Customs Duties.

1. Delegation of powers.—Powers and duties under this section may be delegated by the Secretary of the Treasury to his subordinates as he may deem wise. (1925) 35 Op. Atty. Gen. 15.

2. Securities to which applicable.—Bonds are included under the designation "other securities of the United States." (1925) 34 Op. Atty. Gen. 405.

3. Destruction of cancelled obligations.—The Secretary of the Treasury is authorized under this section to regulate the disposal of paid and cancelled notes, securities and other obligations including government bonds paid, redeemed, exchanged or received, retired and cancelled, and he may have same destroyed after proper record thereof if necessary to protect the United States from fraud and loss. (1925) 34 Op. Atty. Gen. 405.

4. Transmission of money to treasury.—A regulation and circular making it the duty of collectors to transmit money to the treasurer or assistant treasurer by a designated express company and in such transmission to use the forms of voucher and waybill prepared by the department, were authorized under this section. U. S. v. Brendel (N. Y. 1905) 136 F. 737, 740, 69 C. C. A. 389.

5. Effect of invalidity of regulations.—Interest on deposits of court funds collected by United States cannot be recovered from United States by person making deposit, in absence of showing that collection was made for benefit of such person even though regulation requiring payment to United States was unauthorized. U. S. v. Minnesota Mut. Inv. Co. (Colo. 1926) 46 S. Ct. 501, 271 U. S. 212, 70 L. Ed. 911.

§ 428. Gold certificates in exchange for gold bullion. The Secretary of the Treasury is authorized to receive deposits of gold bullion with the Treasurer or any agencies designated under section 476 of this title, in sums not less than $20, and to issue certificates therefor, in denominations of not less than $20 each, corresponding with the denominations of the United States notes. The bullion deposited for or representing the certificates of deposit shall be retained in the Treasury for the payment of the same on demand. And certificates representing coin in the Treasury may be issued in payment of interest on the public debt, which certificates, together with those issued for coin and bullion deposited, shall not at any time exceed 20 per centum beyond the amount of coin and bullion in the Treasury. (R. S. § 254.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1863, c. 73, § 5, 12 Stat. 711.

In the original text, the first sentence referred to deposits of "gold coin and bullion" with the Treasurer "or any assistant treasurer," and the second sentence referred to the "coin and bullion" deposited.

It was superseded, so far as it applied to gold coin by later acts incorporated in section 429 of this title.

By Act May 29, 1920, c. 214, § 1, 41 Stat. 655, the offices of the assistant treasurers were abolished, and the secretary was authorized to transfer their duties and functions to the Treasurer, etc., or utilize Federal reserve banks acting as depositaries or fiscal agents of the United States for the performance of such duties and functions. (See section 476 of this title.)

A provision at the end of the section making certificates receivable in payment of duties on imports, was probably omitted as superseded by section 451 of this title.

Cross-References

Gold bars transferred from the assay-office at New York may be applied to the redemption of coin certificates, by section 370 of this title.

Certificates of deposit issued under this section are not to be paid in silver by section 458 of this title.

The use of coin certificates issued under this section for payment to depositors of bullion at the mints and the assay office at New York is authorized by a provision of section 359 of this title.

Duties on imports are payable in gold and silver coin, coin certificates, or demand-treasury notes, by section 197 of Title 19, Custom Duties.

See section 430 of this title, authorizing the Secretary of the Treasury to constitute superintendents of mints or assayers depositaries to receive coin or bullion under this section.

Notes of Decisions

1. Action to recover gold represented by certificates fraudulently canceled.—Where a party presents for payment government gold certificates, and the government cashier fraudulently cancels and applies them upon his own indebtedness to the government, and the party, treating them as money, brings his action

in the nature of a common-law action in assumpsit to recover the amount thereof, it will be held that the government has in its possession gold coin belonging to the party, and judgment will be rendered payable in gold. State Nat. Bank of Boston v. U. S. (1874) 10 Ct. Cl. 519, affirmed (1878) 96 U. S. 30, 24 L. Ed. 647; State Nat. Bank of Boston v. U. S. (1889) 24 Ct. Cl. 488.

§ 429. Deposits of gold coin; gold certificates. The Secretary of the Treasury is authorized and directed to receive deposits of gold coin with the Treasurer, or any of the agencies designated under section 476 of this title, in sums of not less than $20, and to issue gold certificates therefor in denominations of not less than $10, and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose. Such certificates when received for customs, taxes, and all public dues may be reissued, and when held by any national banking association may be counted as a part of its lawful reserve: *Provided,* That whenever and so long as the gold coin and bullion held in the reserve fund in the Treasury for the redemption of United States notes and Treasury notes shall fall and remain below $100,000,000 the authority to issue certificates as herein provided shall be suspended: *And provided further,* That whenever and so long as the aggregate amount of United States notes and silver certificates in the general fund of the Treasury shall exceed $60,000,000 the Secretary of the Treasury may, in his discretion, suspend the issue of the certificates herein provided for: *And provided further,* That of the amount of such outstanding certificates one-fourth at least shall be in denominations of $50 or less: *And provided further,* That the Secretary of the Treasury may, in his discretion, issue such certificates in denominations of $10,000, payable to order: *And provided further,* That the Secretary of the Treasurer* may, in his discretion, receive, with the agencies designated under section 476 of this title, in New York and in San Francisco, deposits of foreign gold coin at their bullion value in amounts of not less than $1,000 in value and issue gold certificates therefor of the description herein authorized: *And provided further,* That the Secretary of the Treasury may, in his discretion, receive, with the Treasurer or any agencies designated under section 476 of this title, deposits of gold bullion bearing the stamp of the coinage mints of the United States, or the assay office in New York, certifying their weight, fineness, and value, in amounts of not less than $1,000 in value, and issue gold certificates therefor of the description herein authorized. But the amount of gold bullion and foreign coin so held shall not at any time exceed two-thirds of the total amount of gold certificates at such time outstanding. (R. S. § 254; July 12, 1882, c. 290, § 12, 22 Stat. 165; Mar. 14, 1900, c. 41, § 6, 31 Stat. 47; May 26, 1906, c. 2558, 34 Stat. 202; Mar. 4, 1907, c. 2913, § 1, 34 Stat. 1289; Mar. 2, 1911, c. 190, 36 Stat. 964; June 12, 1916, c. 142, 39 Stat. 225; May 20,† 1920, c. 214, § 1, 41 Stat. 654.)

* "Treasurer" should be "Treasury."
† "May 20" should be "May 29."

Historical Note

This is Act March 14, 1900, c. 41, § 6, cited to the text, as amended by the Acts of 1906, 1907, 1911, and 1916, also cited to the text.

That section superseded provisions on the same subject contained in R. S. § 254 and Act July 12, 1882, c. 290, § 12.

The first proviso of this section, as orig-

inally enacted, was amended, by Act May 26, 1906, c. 2558, cited to the text, by changing the words "one hundred" to "fifty" and by adding to that proviso a clause directing the Secretary of the Treasury to coin all gold bullion held in the reserve fund in excess of $50,000,000; but the proviso was restored to read as originally enacted and as set forth here, with the addition after the words "gold coin" of the words "and bullion," by Act March 4, 1907, c. 2913, § 1. The last-mentioned act also amended the first sentence of the section by limiting the issue of gold certificates to denominations not less than ten dollars instead of twenty dollars. The section was further amended by adding the last sentence and the two provisos preceding by act March 2, 1911, c. 190. It was further amended by Act June 12, 1916, c. 142, by substituting in the last sentence of the section the word "two-thirds" for the word "one-third."

Upon its incorporation into the Code, references to the assistant treasurers were changed to conform to section 476 of this title. A provision in the second sentence that the certificates should be receivable for customs, etc., was apparently eliminated as superseded by section 451 of this title.

A provision at the end of the section omitted here repealed R. S. § 5193.

§ 430. Same; receiving by superintendents of mints or assayers of assay offices. The Secretary of the Treasury is authorized to constitute any superintendent of mint or assayer of any assay office a depositary to receive gold coin and bullion on deposit for the purposes provided for in sections 428 and 429 of this title. (June 8, 1878, c. 170, 20 Stat. 102; May 29, 1920, c. 214, § 1, 41 Stat. 654.)

Historical Note

This is the Act of June 8, 1878, c. 170, cited to the text, with the words "an assistant treasurer of the United States" changed to "a depositary" to conform to Act May 29, 1920, c. 214, § 1, also cited to the text.

CHAPTER 9.—LEGAL TENDER

Sec.
451. United States gold certificates.
452. United States notes.
453. Treasury notes.
454. Interest-bearing notes.
455. Legal-tender quality of money not affected by certain sections.
456. Foreign coins.
457. Gold coins of United States.
458. Standard silver dollars; paid in silver.
459. Subsidiary silver coins.
460. Minor coins.
461. Commemorative coins.

Section 451. United States gold certificates. Gold certificates of the United States payable to bearer on demand shall be legal tender in payment of all debts and dues, public and private. (Dec. 24, 1919, c. 15, § 1, 41 Stat. 370.)

Historical Note

This was an act entitled "An act to make gold certificates of the United States payable to bearer on demand legal tender," cited to the text.

Section 2 of the act repealed all inconsistent acts or parts of acts.

§ 452. United States notes. United States notes shall be lawful money, and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt. (R. S. § 3588.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 25, 1862, c. 33, § 1, 12 Stat. 345; Act July 11, 1862, c. 142, § 1, 12 Stat. 532; Res. Jan. 17, 1863, No. 9, 12 Stat. 823; Act March 3, 1863, c. 73, § 3, 12 Stat. 711.

Notes of Decisions

1. Validity and scope of statute.—This section is constitutional. Norwich & W. R. Co. v. Johnson (Conn. 1873) 15 Wall. 195, 21 L. Ed. 178; Latham v. U. S. (1864) 1 Ct. Cl. 149, appeal dismissed (1869) 9 Wall. 145, 19 L. Ed. 772. Contra, Hepburn v. Griswold (Ky. 1870) 8 Wall. 603, 606, 19 L. Ed. 513.

This statute is constitutional when applied to contracts made before its passage. Legal Tender Cases (1870) 12 Wall. 457, 529, 20 L. Ed. 287, overruling on this point Hepburn v. Griswold (Ky. 1870) 8 Wall. 603, 19 L. Ed. 513.

It is also valid as applicable to contracts made since its enactment. Legal Tender Cases (Tex. 1871) 12 Wall. 457, 529, 20 L. Ed. 287. See, also, Latham's Case (1864) 1 Ct. Cl. 149, appeal dismissed (1869) 9 Wall. 145, 19 L. Ed. 772. (1866) 12 Op. Atty. Gen. 84.

Congress has the constitutional power to make the treasury notes of the United States a legal tender in payment of private debts, in time of peace as well as in time of war. The Legal Tender Cases (N. Y. 1884) 4 S. Ct. 122, 110 U. S. 421, 28 L. Ed. 204.

Where British sovereigns were shipped on board a vessel in Melbourne, under a bill of lading by which the ship agreed to carry them to New York, and there deliver them on payment of freight, and the ship failed to deliver them, and the indorsee of the bill libeled the ship for damages, held, that the agreement was not to pay money, but to transport articles on freight, and that the legal tender act (incorporated in part in this section) had no application. The Patrick Henry (D. C. N. Y. 1867) Fed. Cas. No. 10,805.

The constitutionality of the Legal Tender Act of 1862 (incorporated in part in this section) would not be treated by a state court as open to question after the act had been in operation five years, during which time the treasury notes, made a legal tender by the act, had practically constituted the money of the country. Essex Co. v. Pacific Mills (1867) 96 Mass. (14 Allen) 389.

2. Retrospective effect.—Statute held to apply to debts contracted before as well as debts contracted after enactment. Hepburn v. Griswold (Ky. 1870) 8 Wall. 603, 606, 19 L. Ed. 513.

Though a note was made before the enactment of this statute, a tender in payment thereof in United States notes was valid, and stopped the running of interest. Dooley v. Smith (Ky. 1872) 13 Wall. 604, 606, 20 L. Ed. 547, following the decision in Legal Tender Cases (Tex. 1871) 12 Wall. 457, 529, 20 L. Ed. 287.

Laws of this character are not laws operating restrospectively, but in præsenti and prospectively. Higgins v. Bear River & A. Water & Mining Co. (1865) 27 Cal. 153.

3. "Debts" within meaning of statute.—In debt for custom house duties, a judgment for so many dollars "payable in gold (and silver) money of the United States" for duties is good; nothing but gold and silver coin having been made a legal tender for this specie of debt to the government, though treasury notes were by this statute made a legal tender in regard to most other debts. Sun Cheong-Kee v. U. S. (Cal. 1866) 3 Wall. 320, 326, 18 L. Ed. 72.

A contract to pay coined money cannot be satisfied by tender of United States notes. Bronson v. Rodes (N. Y. 1869) 7 Wall. 229, 251, 19 L. Ed. 141.

The debts referred to herein are debts payable in money generally, and not obligations payable in commodities or obligations of any other kind. Trebilcock v. Wilson (Iowa, 1872) 12 Wall. 687, 697, 20 L. Ed. 460.

A contract held not to imply an obligation to pay in gold. Maryland v. Baltimore & O. R. Co. (Ill. 1874) 22 Wall. 105, 111, 22 L. Ed. 713.

The principal of a ground rent is not a debt within the meaning of this statute. Philadelphia & R. R. Co. v. Morrison (C. C. Pa. 1864) Fed. Cas. No. 11,089.

Where Treasury notes issued in August, 1861, having three years to run, were in terms payable in dollars, without designating the kind of money in which they should be paid, they might be paid, under the decision of the Supreme Court in the Legal Tender Cases (1870) 12 Wall. 457, 20 L. Ed. 287, at maturity in the money known as "legal tender" and the fact that the agents of the Treasury, authorized to receive subscriptions for the loan, advertised that payment would be made in gold, being without authority of law, did not control the case. Savage v. U. S. (1872) 8 Ct. Cl. 545, affirmed (1875) 92 U. S. 382, 23 L. Ed. 660.

"Debts" within the meaning of the statute include all debts, public and private, within the United States, except duties on imports and interest on the bonds and notes of the United States. The law, so far as it declares that treasury notes shall be a legal tender in the payment of debts, make no reference to the time when the obligation had its inception. It operated directly upon subsisting debts, recognizing the existing relations of debtors and creditors, and declared that a certain kind of money, which was made lawful money by sovereign authority, should be a legal tender as well as other kinds of money, in the payment of debts then due, or to become due thereafter, while such money might be a lawful currency and legal tender in the payment of debts. Higgins v.

Bear River, etc., Water, etc., Co. (1865) 27 Cal. 153.

4. —— Taxes.—It has been held that the word "debt," as used in this section, does not refer to taxes imposed by state authority. Lane County v. Oregon (Or. 1869) 7 Wall. 71, 74, 19 L. Ed. 101.

The statutes making the notes of the United States a legal tender do not apply to involuntary contributions exacted by a state, such as assessments upon property for local improvements, but only to obligations for the payment of money founded on contracts, express or implied. Hagar v. Reclamation Dist. No. 108 (Cal. 1884) 4 S. Ct. 663, 666, 111 U. S. 701, 28 L. Ed. 569.

Taxes are not "debts," within the meaning of that term, as used in this section and state and county taxes could not be discharged by the United States notes issued in pursuance of this act. Perry v. Washburn (1862) 20 Cal. 318.

The phrase "debts," in the act intended only such obligations for the payment of money as were founded upon contract. Id.

A territorial tax was a debt within the meaning of this section. Haas v. Misner (1867) 1 Idaho, 170.

Under the revenue laws in force in Idaho territory in 1864, taxes were payable in United States legal tender notes. People v. Bear (1868) 1 Idaho, 217.

5. Notes which are legal tender.—Notes reissued pursuant to section 404 of this title, are legal tender. Legal Tender Cases (N. Y. 1884) 4 S. Ct. 122, 124, 110 U. S. 421, 28 L. Ed. 204.

National bank notes and silver certificates are not legal tender. Vick v. Howard (1923) 116 S. E. 465, 136 Va. 101, 31 A. L. R. 240.

6. Nature of United States notes.—Though United States notes are intended to circulate as money, and, with the national bank notes, actually constitute the ordinary circulating medium of the country, they are obligations of the national government. New York ex rel. Bank of New York v. New York County (N. Y. 1869) 7 Wall. 26, 28, 19 L. Ed. 60.

United States notes are engagements to pay coined dollars of the United States. Id.

7. Judicial notice and evidence.—Judicial notice is taken of the acts of Congress defining the nature and value of United States treasury notes. State v. Moseley (1866) 38 Mo. 380.

Judicial notice will be taken that a 10-dollar currency bill of the United States of America is not and cannot be worth $20. Jones v. State (1898) 46 S. W. 250, 39 Tex. Cr. R. 387.

In a larceny prosecution where the information charged larceny of three $50 bills, lawful money of the United States, a more particular description of which was unknown and could not be given, and there was evidence that the bills had been paid and received as cash compensation for services rendered in a real estate transaction, and were frequently referred to as money and sufficiently proved to be paper currency, held that evidence was sufficient to sustain the charge in view of this section. State v. Elliott (1921) 202 P. 847, 110 Kan. 40.

8. Assessment of damages.—In assessing damages a jury may take into account the fact that the judgment could be paid in legal tender notes. The Vaughan (N. Y. 1872) 14 Wall. 258, 20 L. Ed. 807. See, also, Texas v. White (1868) 7 Wall. 700, 19 L. Ed. 227.

§ 453. Treasury notes. Demand Treasury notes authorized by the Act of July 17, 1861, chapter 5, and the Act of February 12, 1862, chapter 20, shall be lawful money and a legal tender in like manner as United States notes. Treasury notes issued under the Act of July 14, 1890, chapter 708, shall be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated in the contract. (R. S. § 3589; July 14, 1890, c. 708, § 2, 26 Stat. 289.)

Historical Note

The first sentence of this section is from R. S. § 3589, which was derived from Act July 17, 1861, c. 5, § 1, 12 Stat. 259; Act Feb. 12, 1862, c. 20, § 1, 12 Stat. 338; Act Feb. 25, 1862, c. 33, § 1, 12 Stat. 345; Act March 17, 1862, c. 45, § 2, 12 Stat. 370.

The second sentence is from Act July 14, 1890, c. 708, § 2, cited to the text.

Cross-References

The provision of the Act of July 14, 1890, c. 708, § 2, incorporated in the second sentence of this section, is also set forth in section 410 of this title, and other provisions of the same section are contained in section 410 of this title and section 145 of Title 12, Banks and Banking. See the notes to those sections.

Treasury notes are payable to any creditor of the United States, by section 202 of this title.

Notes of Decisions

1. Medium of payment.—See, also, notes under section 452 of this title.

Where the holder of treasury notes issued under this statute demanded payment in gold, and the Secretary of the Treasury refused such payment, but offered legal tender notes, and the holder under protest received such notes and delivered the treasury notes to be canceled, he waived all claim by accepting the medium offered and surrendering the treasury notes to payment of the notes in gold. Savage v. U. S. (Ct. Cl. 1876) 92 U. S. 382, 23 L. Ed. 660.

2. Treasury notes issued prior to February 25, 1862.—In (1862) 10 Op. Atty. Gen. 196, the attorney general said that treasury notes issued under the various Acts of Congress prior to February 25, 1862, are not legal tender.

3. Effect of contract.—An express contract to pay coin of the United States is not within the clause of the statute which makes treasury notes a legal tender in payment of debts. Bronson v. Rodes (N. Y. 1869) 7 Wall. 229, 19 L. Ed. 141. See, also, Butler v. Horwitz (Md. 1869) 7 Wall. 258, 19 L. Ed. 149; Baker v. Ward (D. C. N. Y. 1868) 3 Ben. 449, 2 Fed. Cas. No. 785; Belford v. Woodward (1895) 158 Ill. 122, 41 N. E. 1097, 29 L. R. A. 593. But see Milliken v. Sloat (1865) 1 Nev. 573.

Judgments on contracts payable in gold may be entered for coined dollars and parts of dollars. Bronson v. Rodes (N. Y. 1869) 7 Wall. 229, 19 L. Ed. 141.

4. Debts of United States payable abroad.—"Undoubtedly all claims against the United States, not specially excepted, which are payable at the treasury, are payable in these notes. It is not so clear that debts of the United States incurred and to be paid abroad, where our treasury notes have no currency, come within the purview of this Act. On the contrary, a reasonable construction leads to the conclusion that in this class of debts and expenditures the rate of exchange must be taken into the account, so as to provide the full amount necessary to pay the debt or expenditure at the place of payment." (1866) 12 Op. Atty. Gen. 9. But see (1864) 11 Op. Atty. Gen. 52, where the sum awarded to the claimant "is payable in current money of the United States."

5. Obligations of foreign countries.—In (1869) 13 Op. Atty. Gen. 85, the attorney general said that the annual installments of interest due to the United States under the convention with Spain of February 17, 1834, might, by virtue of the Legal Tender Act of February 25, 1862 (incorporated in part in this section) be paid in treasury notes if the Spanish government chose to offer them in payment, there being no express provision in the convention that the money should be paid in coin.

6. Sufficiency of evidence in larceny prosecution.—See State v. Elliott (1921) 202 P. 847, 110 Kan. 40.

§ 454. Interest-bearing notes. Treasury notes issued under the authority of the Acts of March 3, 1863, chapter 73, and June 30, 1864, chapter 172, shall be legal tender to the same extent as United States notes, for their face value, excluding interest: *Provided,* That Treasury notes issued under the Act last named shall not be a legal tender in payment or redemption of any notes issued by any bank, banking association, or banker, calculated and intended to circulate as money. (R. S. § 3590.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1863, c. 73, § 2, 12 Stat. 710; Act June 30, 1864, c. 172, § 2, 13 Stat. 218.

Notes of Decisions

1. "Treasury notes."—The term "Treasury notes" has been generally employed by Congress from an early period to designate interest-bearing notes of the United States, something intermediate between the currency and the funded debt of the United States. (1892) 20 Op. Atty. Gen. 319.

§ 455. Legal-tender quality of money not affected by certain sections. Nothing contained in sections 146, 313, 314, 320, 406, 408, 411, 429, and 751 of this title, and sections* 101 and 178 of Title 12 shall be construed to affect the legal-tender quality as now provided by law of the silver dollar, or of any other money coined or issued by the United States. (Mar. 14, 1900, c. 41, § 3, 31 Stat. 46.)

*Sections 51 and 542 of Title 12 might be added to the sections enumerated, although their omission probably does not materially change the meaning of the section.

Historical Note

This section was part of the Parity Act of 1900. Other provisions of that act are contained in the sections referred to in the text, and those mentioned in the starred note.

§ 456. Foreign coins. No foreign gold or silver coins shall be a legal tender in payment of debts. (R. S. § 3584.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 21, 1857, c. 56, § 3, 11 Stat. 163.

Cross-References

Provisions relating to the value of foreign coins and for the recoinage of foreign coins, are contained in sections 372 to 375 of this title.

Philippine coins as legal tender in the Philippine Islands, see sections 1143, 1145 and 1146 of Title 48, Territories and Insular Possessions.

Notes of Decisions

See, also, notes to section 372 of this title.

1. Quality of legal tender denied to foreign coins.—In Veazie Bank v. Fenno (Me. 1869) 8 Wall. 533, 19 L. Ed. 482, Chase, C. J., said: "It cannot be doubted that under the Constitution the power to provide a circulation of coin is given to Congress. And it is settled by the uniform practice of the government and by repeated decisions, that Congress may constitutionally authorize the omission of bills of credit. * * * Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may constitutionally secure the benefit of it to the people by appropriate legislation. To this end, Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community."

2. Contracts for payment in foreign money.—A person indebted in a certain sum of British sterling gave a bond for the amount in sterling generally, payable in Ireland. Held to be construed British sterling, but to carry Irish interest. Bushby v. Camac (C. C. Pa. 1822) Fed. Cas. No. 2,226.

On a shipment at St. John for a voyage to terminate in the United States for wages at "$25 per month," the seaman is not entitled to an amount in our currency equal to the value of the contract price here, if paid in the currency of St. John. Trecartin v. The Rochambeau (C. C. Me. 1865) Fed. Cas. No. 14,163.

An agreement for payment of wages in pounds held to mean pounds sterling, and not the currency of the locality, which was greatly depreciated. Quimby v. The Euphemia (D. C.) Fed. Cas. No. 11,512.

A decree for freight payable in sterling money will be for the amount of such money in gold and silver coin of the United States. Forbes v. Murray (D. C. N. Y. 1869) Fed. Cas. No. 4,928.

A contract to pay 1,000 pounds sterling, lawful money of Great Britain, agreed to be worth a certain sum "in the gold coin of the United States," is solvable only in gold coin. The Edith (D. C. N. Y. 1871) Fed. Cas. No. 4,281.

And as a decree by a court of the United States for the payment of money can be made only for the payment of so many dollars of some species of money that is made lawful money by a statute of the United States, it follows that a recovery upon such a promissory note or contract must be for so many dollars in gold and silver coin, lawful money of the United States, as are equivalent to the foreign denomination, expressed in the instrument, upon which the recovery is decreed. The Edith (D. C. N. Y. 1871) 5 Ben. 144, 8 Fed. Cas. No. 4,281; Forbes v. Murray (D. C. N. Y. 1869) 3 Ben. 497, 9 Fed. Cas. No. 4,928.

Under a stipulation for payment in New York of an amount expressed in English money, "at the current rate of exchange" for bills on London, the amount payable is not calculated in gold, but in currency, at the current rate of bills on London, with interest at the New York rate. Hus v. Kempf (D. C. N. Y. 1879) Fed. Cas. No. 6,944.

As to reservation of ground rent in 1779 in current money of Virginia, see Faw v. Marsteller (Dist. Col. 1804) 2 Cranch, 10, 2 L. Ed. 191, reversing (C. C. 1803) Fed. Cas. No. 9,137.

3. Payment of deposits.—Receipt of deposits of foreign money and payment thereof is against public policy. Webber v. American Union Bank (1926) 217 N. Y. S. 833, 128 Misc. Rep. 123.

§ 457. Gold coins of United States. The gold coins of the United States shall be a legal tender in all payments at their nominal value

when not below the standard weight and limit of tolerance provided by law for the single piece, and, when reduced in weight below such standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight. (R. S. § 3585.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 14, 17 Stat. 426.

Notes of Decisions

1. **Repeal.**—Section 121 of Title 12, Banks and Banking, was not intended to repeal or affect the general provisions of law making the coins of the United States a legal tender in all payments (this and following sections). (1881) 17 Op. Atty. Gen. 144.

2. **Contracts to pay in gold.**—An express contract to pay in gold, made since the passage of the legal tender acts (incorporated in part in sections 452 and 453 of this title) is valid and enforceable. The Emily B. Souder (C. C. N. Y. 1871) Fed. Cas. No. 4,456, affirmed (1873) 17 Wall. 666, 21 L. Ed. 683. The Emily B. Souder (D. C. N. Y. 1869) Fed. Cas. No. 4,454; The Edith (D. C. N. Y. 1871) Fed. Cas. No. 4,281.

A municipal bond, by which the obligors acknowledge themselves to be indebted for a specified sum "in gold coin," "which sum" they bind themselves and their successors "to pay to bearer" (without specifying any medium of payment), and the coupons of which are expressly payable in "currency," is legally payable in any money of the United States, of whatever kind, and not in gold coin alone. Mr. Justice Peckham, Mr. Justice Brewer, and Mr. Justice White, dissenting, were of the opinion that a contrary decision by a state Supreme Court was purely a matter of local law, and therefore conclusive on the United States Supreme Court. Woodruff v. State of Mississippi (Miss. 1896) 16 S. Ct. 820, 162 U. S. 291, 40 L. Ed. 973, reversing (1889) 66 Miss. 298, 6 So. 235.

The laws of Washington giving cities authority to provide means for constructing works of public utility by issuing bonds include authority to make such bonds payable in gold coin of the present standard weight and fineness. Moore v. City of Walla Walla (C. C. Wash. 1894) 60 F. 961.

Where a debt for advances to a vessel in a foreign port is contracted in gold, the decree against the vessel therefor will be for the amount in gold. The Emily B. Souder (D. C. N. Y. 1869) Fed. Cas. No. 4,454.

§ 458. **Standard silver dollars; paid in silver.** Silver dollars coined under the Act of February 28, 1878, together with all silver dollars coined by the United States, of like weight and fineness prior to the date of such Act, shall be a legal tender, at their nominal value, for all debts and dues public and private, except where otherwise expressly stipulated in the contract. But nothing in this section shall be construed to authorize the payment in silver of certificates of deposit issued under the provisions of sections 428 and 429 of this title. (Feb. 28, 1878, c. 20, § 1, 20 Stat. 25.)

Historical Note

This is from the first section of the Bland-Allison Coinage of Silver Act cited to the text.

Portions of the original text omitted here provided for the coinage of silver dollars of the weight of 412½ grains Troy of standard silver with the devices and superscriptions provided by Act Jan. 18, 1837, c. 3, 5 Stat. 137; and for the purchase of bullion to be coined into silver dollars. The provision for the purchase of bullion was repealed by Act July 14, 1890, c. 708, § 5, 26 Stat. 289. The provision for the coinage of silver dollars was probably omitted as superseded or obsolete.

R. S. § 3586 made silver coins a legal tender, at their nominal value, for any amount not exceeding five dollars in any one payment. It was superseded by this section, section 459 of this title, and Res. July 22, 1876, No. 17, § 2, 19 Stat. 215, providing that the trade dollar should no longer be a legal tender.

This last mentioned section was probably omitted from the Code because of the repeal of laws authorizing the coinage and issuance of trade dollars by Act March 3, 1887, c. 396, § 3, 24 Stat. 635.

Cross-References

For the devices and superscriptions required by Act Jan. 18, 1837, referred to in the original text of this section, see the historical note to section 324 of this title.

Notes of Decisions

1. **Validity.**—The questions affecting the constitutionality of the provision of this act, known as the "Bland-Allison Act" (incorporated in part in this section), were conclusively determined by the decision of the Supreme Court of the United States. Baldwin v. Baker (1899) 80 N. W. 36, 121 Mich. 259, 6 Detroit Leg. N. 431, writ of error dismissed (1902) 23 S. Ct. 19, 187 U. S. 61, 47 L. Ed. 75. See also, Legal Tender Cases (Tex. 1871) 12 Wall. 457, 20 L. Ed. 287; Juilliard v. Greenman (N. Y. 1884) 110 U. S. 444, 4 S. Ct. 122, 28 L. Ed. 204. Writ of error dismissed, Baker v. Baldwin (Mich. 1902) 187 U. S. 61, 23 S. Ct. 19, 47 L. Ed. 75.

§ 459. Subsidiary silver coins. The silver coins of the United States in existence June 9, 1879, of smaller denominations than $1 shall be a legal tender in all sums not exceeding $10 in full payment of all dues public and private. (June 9, 1879, c. 12, § 3, 21 Stat. 8.)

Editorial comment.—Perhaps the original wording of this section should be restored or the language altered to make it clear that it refers to denominations and not particular coins, in existence on the date mentioned.

Historical Note

Prior to its incorporation into the Code, this section read as follows: "The present silver coins of the United States of smaller denominations than one dollar shall hereafter be a legal tender in all sums not exceeding ten dollars in full payment of all dues public and private."

The twenty-cent piece, the coinage of which was authorized by Act March 3, 1875, c. 143, § 1, 18 Stat. 478, was made a legal tender at its nominal value for any amount not exceeding five dollars in any one payment, by section 2 of said act. The act was repealed by Act May 2, 1878, c. 79, 20 Stat. 47.

See the historical note to section 458 of this title concerning R. S. § 3586.

Notes of Decisions

1. **Construction.**—R. S. sec. 3586 (superseded) made the subsidiary silver coins of the United States legal tender at their nominal value only where the amount of the debt, in payment of which they were offered, did not exceed five dollars. The provision applied alike to cases wherein the officers of the government received payment of its dues and to cases wherein they disbursed the public funds in discharge of its obligations. 16 Op. Atty. Gen. (1878) 138.

§ 460. Minor coins. The minor coins of the United States shall be a legal tender, at their nominal value for any amount not exceeding 25 cents in any one payment. (R. S. § 3587.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 12, 1873, c. 131, § 16, 17 Stat. 427.

Notes of Decisions

1. **What constitutes refusal to accept.**—The refusal of a street car conductor, under the company's rule, to accept five 1-cent pieces for fare, except in exchange for a 5-cent piece to be inserted in the automatic collector by the passenger, does not violate this section, so as to render the rule unreasonable; such refusal not amounting to a refusal to accept the five coins in payment of the fare within the meaning of the section. Martin v. Rhode Island Co. (1911) 78 A. 548, 32 R. I. 162, 32 L. R. A. (N. S.) 695, Ann. Cas. 1912C, 1283.

2. **Variance between allegations and proof.**—Under this section and section 317 of this title, specifying denominations of minor coins, 5-cent pieces are legal tender, so that proof that defendant stole 85 cents in United States 5-cent pieces sustained an indictment for theft of 85 cents lawful current money of the United States. Black v. State (1904) 46 Tex. Cr. R. 107, 79 S. W. 311.

§ 461. Commemorative coins. The following coins coined at the mints of the United States under authority of law shall be legal tender in any payment to the amount of their face value:

1. The silver 50-cent pieces coined in commemoration of the one hundredth anniversaries of the admission of the States of Illinois, Maine, Alabama, and Missouri into the Union as States, the seventy-fifth anniversary of the admission of the State of California into the Union, the three hundredth anniversary of the landing of the Pilgrims, the one hundredth anniversary of the enunciation of the Monroe doctrine, the three hundredth anniversary of the settling of New Netherland, the Middle States, in 1624, by Walloons, French and Belgian Huguenots, the one hundred and fiftieth anniversary of the Battle of Lexington and Concord, the one hundred and fiftieth anniversary of the Battle of Bennington and the independence of Vermont, the one hundredth anniversary of the founding of Fort Vancouver, and the commencement of the work of carving a monument on Stone Mountain, Georgia.

2. The gold $2.50 pieces and the silver 50-cent pieces coined in commemoration of the one hundred and fiftieth anniversary of the signing of the Declaration of Independence.

3. The Grant memorial gold dollar and the Grant memorial silver half dollar struck in commemoration of the centenary of the birth of Ulysses S. Grant. (June 1, 1918, c. 91, § 1, 40 Stat. 594; May 10, 1920, c. 176, § 1, 41 Stat. 595; May 10, 1920, c. 177, § 1, 41 Stat. 595; May 12, 1920, c. 182, § 1, 41 Stat. 597; Mar. 4, 1921, c. 153, § 1, 41 Stat. 1363; Feb. 2, 1922, c. 45, 42 Stat. 362; Jan. 24, 1923, c. 38, § 1, 42 Stat. 1172; Feb. 26, 1923, c. 113, § 1, 42 Stat. 1287; Mar. 17, 1924, c. 58, § 1, 43 Stat. 23; Jan. 14, 1925, c. 79, § 5, 43 Stat. 749; Feb. 24, 1925, c. 302, §§ 1–3, 43 Stat. 965, 966; Mar. 3, 1925, c. 482, § 4, 43 Stat. 1254.)

Historical Note

This section is a combination of provisions contained in the various acts cited in the credits to the text.

Cross-References

Other provisions of the acts cited to the text are contained in sections 376 to 379, inclusive of this title, or referred to in the historical notes to those sections.

CHAPTER 10.—THE PUBLIC MONEYS

Sec.
471. Certain duties of Division of Public Moneys transferred to Division of Bookkeeping and Warrants.
472. The Treasury of the United States.
473. Same; foreign countries, the Territories, and the insular possessions.
474. Public moneys subject to draft of Treasurer.
475. Same; bonds.
476. Transfer of duties of assistant treasurers to other officers, etc.
477. Deposit of money or bullion with Federal reserve banks.
478. Member banks as depositaries.
479. Quarters occupied by subtreasuries; assignment to Federal reserve banks.
480 Deputies in case of sickness or absence.
481. Bond of special agents.
482. Collectors of public moneys to pay over.
483. Marshals and district attorneys paying into Treasury.
484. Deposit without deduction.
485. Receipts from private messages sent over Government lines.
486. Private messages over telephone lines controlled by Treasury Department.
487. Proceeds of sales of material.
488. Proceeds of sale of surplus cuttings.
489. Payment of expenses of sales from proceeds.
490. Penalty for withholding money.
491. Fees, fines, etc., payable into Treasury to credit of United States and District of Columbia.

Sec.
492. Duty of disbursing officers.
493. Officers permitted to keep funds for subsistence of the Army for payments of small amounts.
494. Acting disbursing officer in case of sickness or unavoidable absence of disbursing clerk or disbursing agent.
495. Deposit of moneys with public depositary; receipts; postal revenues.
496. Accounts.
497. Same; disbursing officers.
498. Same; distinct accounts required.
499. Same; disbursements under Army Appropriation Acts.
500. Payment of pressing obligations by certain disbursing officers.
501. Payment by disbursing officers; settlement of transactions of Engineer Department.
502. Same; settlement of transactions of Signal Corps.
503. Same; Military Academy.
504. Same; Medical Department.
505. Suits to recover money from officers.
506. Distress warrant.
507. Same; contents.
508. Same; execution against officer.
509. Same; execution against surety.
510. Levy to be lien.
511. Sale of lands regulated.
512. Conveyance of lands.
513. Disposal of surplus.
514. Failure of disbursing officer to account.
516. Extent of application of provision for distress warrants.
517. Postponement of proceedings for nonaccounting.
518. Injunction to stay distress warrant.
519. Proceedings on distress.
520. Rights of United States reserved.
521. Duties of officers as custodians of public moneys.
522. Transfer of moneys from depositaries to Treasury.
523. Postal deposits; transfer.
524. Same; accounts.
525. Entry of each deposit, transfer, and payment.
526. Public moneys in Treasury and depositaries subject to draft of Treasurer.
527. Presentment of drafts.
528. Duplicates for lost, stolen, or destroyed disbursing officers' checks or postal checks or warrants.
529. Advances of public moneys; prohibition against.
530. Same; payment in advance for periodicals.
531. Same; payments for rent of offices in foreign countries.
532. Same; by United States marshals.
533. Same; Department of Agriculture.
534. Same; Forest Service for fighting forest fires in emergency cases.
535. Advances from appropriation "Boundary line, Alaska and Canada, and the United States and Canada."
536. Advances to disbursing officers and agents under "Army accounts of advances"; amounts; use of.
537. Same; charge to proper appropriations.
538. Same; adjustment of liabilities with account.
539. Requisitions of Secretary of Navy for advances.
540. Same; how charged.
541. Same; settlement of accounts.
542. Partial payments on vessels for Treasury Department; lien.
543. Exchange of funds restricted.
544. Premium on sales of public moneys to be accounted for.
545. Expenses of fiscal agents.
546. Appropriations for construction of public buildings; disbursement.
547. Disposition of trust funds received from foreign governments for citizens of United States.
548. Examination of depositaries.
549. Examination of accounts of custodians of public moneys.
550. Same; Coast and Geodetic Survey.

Editorial comment.—The omission of R. S. §§ 3655 and 3656 from the Code has been criticized. They read as follows:

R. S. § 3655: "The depositaries which have been or may be designated by the Secretary of the Treasury to receive payments and give receipts or certificates of deposit for public money from miscellaneous sources, other than the transactions of the respective offices for which they are or may be commissioned, may be paid in full compensation for receiving, safely keeping, and paying out such public money, at the rate of one-half of one per centum for the first one hundred thousand dollars; one-fourth of one per centum for the second one hundred thousand dollars; and one-eighth of one per centum for all sums over two hundred thousand dollars. Any sum which may have been allowed to such depositary for rent or any other contingent expenses in respect to the custody of such public money shall be deducted from such compensation, before any payment shall be made therefor."

R. S. § 3656: "No compensation shall be allowed for the services mentioned in the preceding section, when the emoluments of the office of which the designated depositary is in commission amount to the maximum compensation fixed by law; nor shall the amount allowed to any of the designated depositaries for such services, when added to the emoluments of the office of which he is in commission, be more than sufficient to make the maximum compensation fixed by law."

They were probably omitted as obsolete.

Historical Note

Act June 20, 1874, c. 328, § 1, 18 Stat. 96, made an appropriation for compensation to designated depositaries at Buffalo, Louisville, and Pittsburgh, followed by a proviso almost identical with R. S. § 3656, and another proviso limiting the whole allowance to any designated depository.

The limitation was repeated in Act March 3, 1875, c. 129, § 1, 18 Stat. 355.

The Secretary of the Treasury was directed to discontinue, from and after September 30, 1876, the depositaries at Buffalo, Santa Fé, and Pittsburgh, by Act Aug. 15, 1876, c. 287, § 1, 19 Stat. 155.

Cross-References

See chapter 5 of Title 18, Criminal Code and Criminal Procedure, for provisions penalizing offenses by depositaries, disbursing officers, and others respecting public moneys.

Notes of Decisions

1. **When compensation is allowed.**—If the depositary receives from the office for which he is commissioned its maximum compensation, he is to be allowed nothing for his services as depositary. But if he receives from the office for which he is commissioned less than its maximum compensation, he is to be allowed for his services as depositary so much of $1,500 as will make up such maximum compensation. McLean v. U. S. (1872) 8 Ct. Cl. 217. See, also, Luce v. U. S. (1874) 10 Ct. Cl. 229.

2. **Commissions on transfer deposits.**—A designated depositary of public moneys is not entitled to commissions on transfer deposits. McLean v. U. S. (1872) 8 Ct. Cl. 217. See, also, Luce v. U. S. (1874) 10 Ct. Cl. 229.

Thus a surveyor of customs acting as designated depositary of public moneys is not entitled to commissions upon "transfer deposits"; i. e., upon moneys transferred to him by other departments of the Treasury as distinguished from moneys paid to him as the representative of the Treasury. Neff v. U. S. (1872) 8 Ct. Cl. 233. See, also, Luce v. U. S. (1874) 10 Ct. Cl. 229.

Section 471. Certain duties of Division of Public Moneys transferred to Division of Bookkeeping and Warrants. The duties appertaining on June 10, 1921, to the Division of Public Moneys of the office of the Secretary of the Treasury, so far as they related to the covering of revenues and repayments into the Treasury, the issue of duplicate checks and warrants, and the certification of outstanding liabilities for payment, shall be performed by the Division of Bookkeeping and Warrants of the office of the Secretary of the Treasury. (June 10, 1921, c. 18, § 308, 42 Stat. 25.)

Historical Note

This section was part of the Budget and Accounting Act of 1921, cited to the text. The other sections are incorporated largely in chapter 1 of this title.

§ 472. The Treasury of the United States. The rooms provided in the Treasury building at the seat of Government for the use of the Treasurer of the United States, his assistants, and clerks, and occupied by them, and the fireproof vaults and safes erected therein for the keeping of the public moneys in the possession and under the immediate control of the Treasurer, and such other apartments as are provided as places of deposit of the public money, shall be the Treasury of the United States. (R. S. § 3591.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 1, 9 Stat. 59.

Notes of Decisions

1. **What constitutes United States Treasury.**—The United States Treasury proper, as constituted by what is commonly known as the Independent Treasury Act, July 4, 1840, c. 41, 5 Stat. 385, repealed by the Act of Aug. 13, 1841, c. 7, 5 Stat. 439, and again re-enacted with additional provisions by the Act of Aug. 6, 1846, c. 90, 9 Stat. 59 (in-

corporated in part in this section) is a depository of public money where the actual money of the government—gold, silver, bullion, notes, and currency—is kept in kind as received from the public revenues, or deposited there by express authority of law, and where it remains the specific property of the government and cannot be intermingled with other funds, as the Treasurer is not authorized to permit other money to be deposited therein except in special cases expressly provided for by statute. And the "sub-treasuries," commonly so called, under the charge of assistant treasurers, where the public money is received and kept under like relations, as well as the mints and perhaps other like places of deposit, may, in a general sense, be considered as part of the United States Treasury. Branch v. U. S. (1876) 12 Ct. Cl. 281, affirmed (1880) 100 U. S. 673, 25 L. Ed. 759.

2. **"Public money" defined.**—The term "public money," as used in the statutes of the United States, ordinarily means the money of the government, received from the public revenues, or intrusted to its officers charged with the duty of receiving, keeping, or disbursing the same wherever it may be. It does not include the money of states, counties, cities, and towns, although with reference to those governments and municipalities such funds in other connections would be deemed public money. Nor does it include money in the hands of the marshals, clerks, and other officers of court held by them under authority of law to await the judgment of the court in relation to the ownership thereof. Branch v. U. S. (1876) 12 Ct. Cl. 281, affirmed (1880) 100 U. S. 673, 25 L. Ed. 759.

§ 473. Same; foreign countries, the Territories, and the insular possessions. The Secretary of the Treasury may designate such depositaries of public moneys in foreign countries and in the Territories and insular possessions of the United States as may be necessary for the transaction of the Government's business, under such terms and conditions as to security and otherwise as he may from time to time prescribe: *Provided,* That in designating such depositaries American financial institutions shall be given preference wherever, in the judgment of the Secretary of the Treasury, such institution is safe and able to render the service required. (June 19, 1922, c. 228, 42 Stat. 662.)

Editorial comment.—It is not clear that Act July 1, 1902, c. 1369, § 85, 32 Stat. 711 (set out in the historical note) was superseded by this section so far as it referred to the Philippine treasury.

Historical Note

This section was a resolution entitled a "Joint resolution authorizing the Secretary of the Treasury to designate depositaries of public moneys in foreign countries and in the Territories and insular possessions of the United States," cited to the text.

Act June 6, 1900, c. 797, 31 Stat. 658, regarding the designation of banks or bankers in Cuba, Porto Rico, and Philippine Islands in which public moneys might be deposited; and Act July 1, 1902, c. 1369, § 85, 32 Stat. 711, concerning depositories in the Philippine Islands, were evidently omitted from the Code as superseded by this section. The section last cited read as follows: "The treasury of the Philippine Islands and such banking associations in said islands with a paid up capital of not less than two million dollars and chartered by the United States or any State thereof as may be designated by the Secretary of War and the Secretary of the Treasury of the United States shall be depositories of public money of the United States, subject to the provisions of existing law governing such depositories in the United States: Provided, That the treasury of the government of said islands shall not be required to deposit bonds in the Treasury of the United States, or to give other specific securities for the safe-keeping of public money except as prescribed, in his discretion, by the Secretary of War."

Act Sept. 24, 1917, c. 56, § 8, 40 Stat. 291, as amended by Act April 4, 1918, c. 44, § 5, 40 Stat. 504, providing for the designation of depositories in foreign countries for specified purposes until six months after the termination of the war with Germany, was doubtless omitted from the Code as temporary and obsolete.

§ 474. Public moneys subject to draft of Treasurer. All public moneys paid into any depository shall be subject to the draft of the

Treasurer of the United States, drawn agreeably to appropriations made by law. (R. S. § 3593.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 1, 9 Stat. 59.

§ 475. Same; bonds. All officers in any mint, or assay office, authorized by law to act as depositaries, shall, respectively, give bonds to the United States for the faithful discharge of the duties of their respective offices as assistant treasurers, according to law, and for such amounts as shall be directed by the Secretary of the Treasury, with sureties to the satisfaction of the Solicitor of the Treasury; and shall, from time to time, renew, strengthen, and increase their official bonds as the Secretary of the Treasury may direct. (R. S. § 3600.)

Editorial comment.—The words "assistant treasurers" in the second line of this section having been changed to "depositaries," it would seem that they should also have been changed in the fourth line.

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, §§ 5, 7, 9 Stat. 60; Act April 7, 1866, c. 28, § 14, 14 Stat. 26; Act June 15, 1870, c. 129, § 1, 16 Stat. 152; Act Feb. 12, 1873, c. 131, § 65, 17 Stat. 435; Act March 3, 1873, c. 228, § 5, 17 Stat. 543.

Upon its incorporation into the Code, the words "All assistant treasurers, and all officers in any mint or assay office, authorized by law to act as assistant treasurers" were changed to "all officers in any mint or assay office, authorized by law to act as depositaries" to conform to Act May 29, 1920, c. 214, § 1, 41 Stat. 655 (section 476 of this title).

Notes of Decisions

1. Form of bonds.—The form of the bond required to be given by assistant treasurers is left to the determination of the officers by whom the bond is to be approved, but ordinarily the principal and sureties are jointly and severally bound for the entire penalty. The adoption of a different form would not be warranted unless public interest could not otherwise be served. (1885) 18 Op. Atty. Gen. 274.

2. Retroactive bonds.—A bond given by an assistant treasurer might be worded so as to operate retroactively. (1911) 29 Op. Atty. Gen. 28.

3. New bonds.—Whether the new bond is retroactive or not, a full account of the money on hand should be made in order to fix the liability of the respective bonds in the event of defalcation. (1911) 29 Op. Atty. Gen. 28.

4. Liability of sureties.—The sureties on the bond of an assistant treasurer continue liable for his acts while continuing in office after the expiration of his term and until the qualification of his successor. (1906) 25 Op. Atty. Gen. 636.

§ 476. Transfer of duties of assistant treasurers to other officers, etc. The Secretary of the Treasury may, in his discretion, transfer any or all of the duties and functions performed or authorized to be performed prior to May 29, 1920, by assistant treasurers at Boston, New York, Philadelphia, Baltimore, New Orleans, Saint Louis, San Francisco, Cincinnati, and Chicago, or their offices, to the Treasurer of the United States or the mints or assay offices of the United States, under such rules and regulations as he may prescribe, or may utilize any of the Federal reserve banks acting as depositaries or fiscal agents of the United States, for the purpose of performing any or all of such duties and functions, notwithstanding the limitations of sections 391 and 392 of Title 12, or any other provisions of law. (May 29, 1920, c. 214, § 1, 41 Stat. 655.)

Historical Note

This section, and sections 477 to 479 of this title were provisions of the legislative, executive, and judicial appropriation act for the fiscal year 1921, cited to the text.

Other provisions of that section, omitted here, repealed R. S. § 3595, providing for the appointment of Assistant Treasurers at the cities named in the text, and all laws or parts of laws so far as they authorized the establishment or maintenance of offices of such Assistant Treasurers or of Subtreasuries, directed the discontinuance of such subtreasuries, and the exercise of all duties and functions by such assistant treasurers or their offices, terminated the office of each assistant treasurer specified and the services of any officers or other employees assigned to duty at his office, and made provision for the transfer of employees in the subtreasuries in the classified civil service.

So much of R. S. § 3595, as provided for the appointment of an assistant treasurer at Charleston was repealed by Act Aug. 15, 1876, c. 287, § 1, 19 Stat. 155.

The following sections were impliedly repealed by section 1 of the Act of May 29, 1920, or became inoperative as a result thereof: R. S. § 3596, fixing the salaries of the assistant treasurers; R. S. § 3597, prohibiting the receipt of any commission, pay, or perquisite for any official service; R. S. §§ 3598 and 3599, assigning rooms for the use of the assistant treasurers, giving the assistant treasurers charge and care thereof, and requiring them to perform their duties there; R. S. § 3602, providing for a deputy assistant treasurer at New York, and giving him certain powers; R. S. §§ 3601, 3603–3607, and 3609–3612, specifying the employees in the offices of the various assistant treasurers, and their salaries, and making provision for the appointment of other clerks, messengers, etc., at New York.

R. S. § 3608, relative to the employees in the office of the assistant treasurer at Charleston, was superseded by the repeal of the provision of R. S. § 3595, for the appointment of an assistant treasurer at Charleston, by Act Aug. 15, 1876, c. 287, § 1, 19 Stat. 155.

R. S. § 3592, providing that the mints at Carson City, and at Denver, and the assay office at Boise City should be places of deposit for such public moneys as the Secretary of the Treasury might direct, was probably omitted from the Code as superseded by this section.

R. S. § 3594 provided that the superintendent of the mint at Carson City and the superintendent of the assay office at Boise City should be assistant treasurers of the United States, and should have the custody and care of public moneys deposited therein, etc. It may have been omitted as obsolete, no provision having been made in recent appropriation acts for a superintendent at the Carson City mint, or Boise City assay office.

Cross-References

The Secretary of the Treasury is authorized to designate one or more depositories in each State, for the deposit of money collected by virtue of the internal revenue laws, by section 139 of Title 26, Internal Revenue.

The Secretary of the Treasury is authorized to designate depositories for public moneys in foreign countries and the Territories and insular possessions by section 473 of this title.

Deposits of public moneys, with some exceptions, etc., upon direction of the Secretary of the Treasury, in federal reserve banks, is authorized by section 391 of Title 12, Banks and Banking.

Notes of Decisions

1. Qualification of assistant treasurers.—See (1906) 25 Op. Atty. Gen. 636.

2. Term of assistant treasurers.—See (1906) 25 Op. Atty. Gen. 636.

3. Commissions of assistant treasurer.—See Folger v. U. S. (Ct. Cl. 1881) 103 U. S. 30, 26 L. Ed. 364; U. S. v. Butterfield (D. C. N. Y. 1874) Fed. Cas. No. 14,703; Folger v. U. S. (1877) 13 Ct. Cl. 86, affirmed (1881) 103 U. S. 30, 26 L. Ed. 364.

4. Duties of assistant treasurer.—See Cook v. U. S. (N. Y. 1875) 91 U. S. 389, 23 L. Ed. 237.

5. Funds wrongfully obtained from the treasury.—Where one who, by connivance of a clerk in the office of an assistant treasurer, unlawfully obtained money belonging to the United States, to replace it, paid money obtained by fraud from a bank, the clerk having no knowledge of the means by which the latter money was obtained, the United States were not liable to the bank. State Nat. Bank v. U. S. (Ct. Cl. 1885) 5 S. Ct. 888, 891, 114 U. S. 401, 29 L. Ed. 149, distinguishing U. S. v. State Bank (1877) 96 U. S. 30, 24 L. Ed. 647.

§ 477. Deposit of money or bullion with Federal reserve banks. If any moneys or bullion, constituting part of the trust funds or other special funds prior to May 29, 1920, required by law to be kept in

Treasury offices, shall be deposited with any Federal reserve bank, then such moneys or bullion shall by such bank be kept separate and distinct from the assets, funds, and securities of the Federal reserve bank and be held in the joint custody of the Federal reserve agent and the Federal reserve bank. (May 29, 1920, c. 214, § 1, 41 Stat. 655.)

Editorial comment.—It would seem that the words "prior to May 29, 1920" should be made to follow the words "required by law." The present wording and punctuation seem to limit the application of the section to money or bullion constituting part of the trust funds, etc., prior to such date, which does not seem to be the meaning of the original text.

Historical Note

Prior to its incorporation into the Code, this section read as follows: "If any moneys or bullion, constituting part of the trust funds or other special funds heretofore required by law to be kept in Treasury offices, shall be deposited with any Federal reserve bank, then such moneys or bullion shall by such bank be kept separate and distinct from the assets, funds, and securities of the Federal reserve bank and be held in the joint custody of the Federal reserve agent and the Federal reserve bank."

See the historical note to section 476 of this title.

§ 478. Member banks as depositaries. Nothing in sections 476 to 479 of this title shall be construed to deny the right of the Secretary of the Treasury to use member banks as depositaries as authorized by law. (May 29, 1920, c. 214, § 1, 41 Stat. 655.)

Editorial comment.—It has been suggested that the words "of the Federal reserve system" should be inserted after "banks."

Historical Note

See the historical note to section 478 of this title.

§ 479. Quarters occupied by subtreasuries; assignment to Federal reserve banks. The Secretary of the Treasury may assign any or all the rooms, vaults, equipment, and safes or space in the buildings used prior to May 29, 1920, by the subtreasuries to any Federal reserve bank acting as fiscal agent of the United States. (May 29, 1920, c. 214, § 1, 41 Stat. 655.)

Historical Note

See the historical note to section 476 of this title.

§ 480. Deputies in case of sickness or absence. In case of the sickness or unavoidable absence of any depositary from his office, he may, with the approval of the Secretary of the Treasury, authorize the chief clerk, or some other clerk employed therein, to act in his place, and to discharge all the duties required by law of such assistant treasurer or* depositary. The official bond given by the principal of the office shall be held to cover and apply to the acts of the person appointed to act in his place in such cases. Such acting officer shall moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct, in like cases, of the assistant treasurer or* depositary, respectively, for whom he acts. (R. S. § 3613; May 29, 1920, c. 214, § 1, 41 Stat. 655.)

* The words "assistant treasurer or," in two places, should be omitted to agree with the first part of the section.

Historical Note

This is R. S. § 3613 (Act Feb. 13, 1865, c. 32, 13 Stat. 427) with a reference to any assistant treasurer near the beginning of the section omitted as superseded by Act May 29, 1920, c. 214, § 1, cited to the text.

Notes of Decisions

1. Liability of bondsmen.—The bondsmen of the assistant treasurer of the United States at New York were liable for moneys lost by his clerks while in his hands as an officer. U. S. v. Butterfield (D. C. N. Y. 1374) Fed. Cas. No. 14,703.

§ 481. Bond of special agents. Whenever it becomes necessary for the head of any department or office to employ special agents, other than officers of the Army or Navy, who may be charged with the disbursement of public moneys, such agents shall, before entering upon duty, give bond in such form and with such security as the head of the department or office employing them may approve. (R. S. § 3614.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 4, 1854, c. 242, § 14, 10 Stat. 573.

Notes of Decisions

1. Authority to designate agents.—"The head of a department of the government is authorized in the administration of the duties of the office, to employ agents and determine when an exigency arises demanding their employment." U. S. v. Potter (C. C. Minn. 1879) 7 Rep. 675, 27 Fed. Cas. No. 16,076.

The Secretary of Labor might with the concurrence of the Secretary of Commerce, if the public exigencies required it, designate the disbursing clerk of the Department of Commerce to disburse the moneys appropriated for the various bureaus and services of the Department of Labor until a regular disbursing clerk could be appointed, provided he was able and willing to give bond as required by this section. (1913) 30 Op. Atty. Gen. 129.

2. Necessity for bond.—It is in the discretion of the President whether or not to require bonds of an officer of the engineer corps employed as disbursing agent of the government. (1853) 6 Op. Atty. Gen. 24.

3. Form of bond.—Where, during temporary absence of Secretary and Assistant Secretaries, chief clerk of Department of Interior, by authority of the Secretary, designated a special disbursing agent, under Act March 4, 1911 (36 Stat. 1213), the bond should so show. (1911) 29 Op. Atty. Gen. 273.

4. Validity of bonds.—A bond extorted against the requirements of statute is illegal. U. S. v. Tingey (Dist. Col. 1831) 5 Pet. 115, 127, 8 L. Ed. 66.

A voluntary bond held binding, though not prescribed by positive law. Id.

The bond of an agent irregularly appointed, but whose office is established by law, though void as a statutory obligation, is valid as a contract to perform the duties appertaining to such office. U. S. v. Maurice (C. C. Va. 1823) Fed. Cas. No. 15,747.

The government may, through the head of a department, take bond from a disbursing officer, though there be no law or general regulation requiring it; and a bond is none the less a voluntary bond because demanded by the superior officer, if not illegally extorted. Moses v. U. S. (Dist. Col. 1897) 17 S. Ct. 682, 687, 166 U. S. 571, 41 L. Ed. 1119.

5. Liability of disbursing officer.—The forcible seizure by public enemies of public moneys in the hands of a government agent against his will and without his fault is a sufficient discharge from the obligation of his official bond. U. S. v. Thomas (Tenn. 1873) 15 Wall. 337, 341, 21 L. Ed. 89.

A disbursing officer's liability is as great as that of a common carrier, and in some respects greater. Boggs v. U. S. (1909) 44 Ct. Cl. 367.

That an officer is irregularly appointed does not absolve him from the legal obligation to account for public money placed in his hands, in consequence of such appointment. U. S. v. Maurice (C. C. Va. 1823) Fed. Cas. No. 15,747.

6. Liability on bond.—Where a receiver of public moneys, received from sales of public lands, made default after November, 1841, and a former commission expired on the 13th September, and the bond given for performance of duties was dated in November, held, that in stating the account an amount of the public moneys, certified to have been in his hands in November, 1841, sufficient to pay for all the lands sold up to the 13th of September, should be credited to him in the discharge of the first bond, and the deficit charged to the account of said receiver and his sureties in the second bond. (1851) 5 Op. Atty. Gen. 396.

That money was never in the Treasury is immaterial, where it was public money, and the receiver's bond expressly bound him to account for all public moneys coming into his hands. (1891) 20 Op. Atty. Gen. 24.

Surety on bond of departmental disbursing agent held liable for money

drawn on his official check, though not presented for payment until after his resignation. U. S. v. Maryland Casualty Co. (C. C. A. Md. 1924) 299 F. 942.

"The contract in an official bond for the accounting of moneys is not a contract of bailment in which liability depends on the question of reasonable and ordinary care, but it is an absolute contract to pay the money in any event." (1891) 20 Op. Atty. Gen. 24.

7. Defenses.—The acceptance by the United States of a new bond from a receiver of public money is no satisfaction for the damages accruing for the breach of the condition of the old bond. U. S. v. Girault (Miss. 1850) 11 How. 22, 29, 13 L. Ed. 587.

Though the small penalty named in an official bond may show that it was not supposed the officer would have such large sums to disburse as in fact came to his hands, that fact forms no defense to an action on the bond. Moses v. U. S. (Dist. Col. 1897) 17 S. Ct. 682, 687, 166 U. S. 571, 41 L. Ed. 1119.

§ 482. **Collectors of public moneys to pay over.** All collectors and receivers of public money of every description, within the District of Columbia, shall, as often as they may be directed by the Secretary of the Treasury or the Postmaster General so to do, pay over to the Treasurer of the United States, at the Treasury, all public moneys collected by them or in their hands. It shall be the duty of the Secretary and Postmaster General, respectively, to direct such payments by collectors and receivers, at least as often as once in each week, and as much oftener as they may think proper. (R. S. § 3615; May 29, 1920, c. 214, § 1, 41 Stat. 654.)

Editorial comment.—The second sentence of R. S. § 3615, which has been omitted from this section should perhaps be restored with changes necessary to make it refer to the designated depositary instead of the assistant treasurer.

Historical Note

This section is from R. S. § 3615, cited to the text, which was derived from Act Aug. 6, 1846, c. 90, § 9, 9 Stat. 61; Act Feb. 12, 1873, c. 131, § 65, 17 Stat. 435.

Prior to its incorporation into the Code, it contained another sentence which preceded the second sentence of the present text, and which read as follows: "All such collectors and receivers of public moneys within the cities of New York, Boston, Philadelphia, New Orleans, San Francisco, Baltimore, Charleston, and Saint Louis shall, upon the same direction, pay over to the assistant treasurers in their respective cities, at their offices, respectively, all the public moneys collected by them, or in their hands; to be safely kept by the respective depositaries, until otherwise disposed of according to law."

It was evidently omitted as superseded by Act May 29, 1920, c. 214, § 1, cited to the text, or as obsolete in view of that section.

Notes of Decisions

1. Duty to pay over or account for money.—It is the duty of collectors of customs to pay the duties collected by them into the Treasury, although some of them may have been paid under protest, and importers shall have prosecuted suits to recover them back. (1838) 3 Op. Atty. Gen. 392.

A collector or receiver is a bailee of the government and by the common law is only bound to due diligence and only liable for negligence or dishonesty; but by the policy of the Acts of Congress on the subject a more stringent accountability is exacted. U. S. v. Thomas (Tenn. 1873) 15 Wall. 337, 21 L. Ed. 89.

The measure of this enhanced accountability is particularly to be found in the official bond required by these officers, the condition of which requires the payment of the moneys that come to their hands as and when directed; the performance of which condition can only be excused by an overruling necessity. Id.

2. Excuses for non-payment.—A collector or receiver of public money under bond to keep it safely and pay it when required is not bound to render the money at all events, but is excused if prevented from rendering it by the act of God or the public enemy without any neglect or fault on his part. U. S. v. Thomas (Tenn. 1873) 15 Wall. 337, 21 L. Ed. 89.

The late rebellion being a public war, the forcible seizure by the rebel authorities of public moneys in the hands of loyal government agents against their will and without their fault or negligence was a sufficient discharge from their obligations in reference to said moneys. Id.

3. Recovery of payments.—Where a clerk of the circuit court expended money

for clerk hire, and the first comptroller of the treasury demanded from the clerk the payment of a specified sum, claiming that he had expended more than was allowed by law, which sum the clerk paid over with full knowledge of all the facts and without duress of any sort, constituting a voluntary payment, the money could not be recovered. Selby v. U. S. (D. C. Mo. 1891) 47 F. 800.

§ 483. Marshals and district attorneys paying into Treasury. All marshals, district attorneys, and other persons than those mentioned in section 482 of this title, having public money to pay to the United States, may pay the same to any depositary constituted by or in pursuance of law, which may be designated by the Secretary of the Treasury. (R. S. § 3616.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 15, 9 Stat. 62; Act July 8, 1870, c. 230, § 111, 16 Stat. 216.

Cross-References

Failure of a clerk or other officer of a court of the United States to deposit money belonging in the registry of the court, etc., as required, is punishable as embezzlement, by section 185 of Title 18, Criminal Code and Criminal Procedure.

Notes of Decisions

See, also, notes under section 484 of this title.

1. Public moneys only.—"It is obvious from these provisions that it was only public money of the United States of which national banks could be made depositaries, and it was therefore only public money which an officer could deposit in them, whether he received it originally, or received it to disburse." Coudert v. U. S. (1899) 175 U. S. 178, 20 S. Ct. 56, 44 L. Ed. 122.

2. Fund held pending litigation.—"The designated depositories are intended as places for the deposit of the public moneys of the United States; that is to say, moneys belonging to the United States. No officer of the United States can charge the government with liability for moneys in his hands not public moneys, by depositing them to his own credit in a bank designated as a depositary. In this case the money deposited belonged for the time being to the court, and was held as a trust fund pending the litigation. The United States claimed it, but their claim was contested. So long as this contest remained undecided the officers of the treasury could not control the fund. Although deposited with a bank that was a designated depositary it was not paid into the treasury. No one could withdraw it except the court or the clerk, and it was held for the benefit of whosoever in the end it should be found to belong." Branch v. U. S. (Ct. Cl. 1880) 100 U. S. 673, 25 L. Ed. 759; Coudert v. U. S. (1899) 175 U. S. 178, 20 S. Ct. 56, 44 L. Ed. 122, affirming (1896) 73 F. 505, 19 C. C. A. 543.

3. Proceeds of sale of prize.—Money deposited by a marshal in a designated depository as the proceeds of the sale of a prize, there to await the decree of the prize court, is not public money, and the United States will not be responsible for such amount on failure of the bank. Coudert v. U. S. (1899) 175 U. S. 178, 20 S. Ct. 56, 44 L. Ed. 122, affirming (1896) 73 F. 505, 19 C. C. A. 543.

4. Duty of marshal.—The United States marshal is entitled to money received as disbursing officer of the government, or by virtue of the execution of civil or criminal process. Henry v. Sowles (D. C. Vt. 1886) 28 F. 481.

5. Duty of district attorneys.—When the emoluments of the district attorney's office are less than $6,000 per annum, and he has never received from the government the necessary expenses hereinafter mentioned, he is entitled to be reimbursed for the expenses, actually paid by him from his own funds, of the ordinary and necessary telegraphic communications relating to criminal business, which are a part of the necessary expenses of his office, as well as for stationery. Stanton v. U. S. (C. C. Conn. 1896) 75 F. 357, affirmed (C. C. A. 1898) 87 F. 698.

§ 484. Deposit without deduction. The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But noth-

ing herein shall affect any provision relating to the revenues of the Post Office Department. (R. S. § 3617.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1849, c. 110, § 1, 9 Stat. 398; Act Sept. 28, 1850, c. 78, § 3, 9 Stat. 507.

Prior to its incorporation into the Code, the words "except as otherwise provided" were followed by "in the next section." The words last quoted were evidently omitted because of other possible exceptions such as section 489 of this title.

Cross-References

The disposition of receipts from private telegrams sent over Government lines, as required by this section, is prescribed by section 485 of this title.

Moneys derived from the lease, sale, or disposal of the public lands in Alaska, or the coal or mineral or timber thereon, and the earnings of the railroad, telegraph, and telephone lines constructed by the President, are to be paid into the Treasury as other miscellaneous receipts, and a separate account thereof to be kept and annually reported to Congress, by section 306 of Title 48, Territories and Insular Possessions.

Notes of Decisions

1. Intent of statute.
2. Duty to make deposits.
3. Moneys to which applicable.
4. Effect of deposit.
5. Liability of officers.
6. Liability on bond.
7. Recovery of fees paid into treasury.
8. Disposition of Indian moneys.
9. Set-offs against the government.
10. Presumptions.

1. Intent of statute.—This statute was intended to take away all excuse from collectors to withhold payments into the treasury, under pretense that they were responsible, as collectors, to individuals for services rendered. U. S. v. Forsythe (C. C. Ohio, 1855) Fed. Cas. No. 15,133.

2. Duty to make deposits.—An order of the Treasury directing a collector of customs to deposit in the Treasury all moneys received by him is equally obligatory upon his successor. Ellsworth v. U. S. (1878) 14 Ct. Cl. 382, affirmed (1880) 101 U. S. 170, 25 L. Ed. 862.

The fees of marshals, district attorneys, and clerks of the United States courts, in government suits, taxed and recovered as costs from the defendant therein, should be turned into the treasury and not paid to the officers; they being entitled to payment by force of R. S. sec. 856 (incorporated in part in section 599 of Title 28, Judicial Code and Judiciary), only on settling their accounts at the treasury and from the proper appropriation. (1877) 15 Op. Atty. Gen. 386.

Since the year 1831, it has become the general policy of the United States to require that all moneys collected in behalf of the United States shall be paid into the Treasury. Some exceptions thereto, not depending upon any special reasons, which here and there have escaped attention, are gradually disappearing. (1883) 17 Op. Atty. Gen. 592.

3. Moneys to which applicable.—Proceeds of the sale of a vessel seized as a prize deposited by a marshal in a national bank which was a depositary of public moneys do not constitute public moneys. Coudert v. U. S. (La. 1899) 20 S. Ct. 56, 57, 175 U. S. 178, 44 L. Ed. 122.

The amount received by the customs officers on the northern frontier for each blank manifest or clearance sold under section 57 of Title 19, Customs Duties, is a fee intended for the use of the officer, and does not come within the provision of this section, requiring "the gross sums of all moneys received from whatever source, for the use of the United States," etc., to be paid into the Treasury. (1877) 15 Op. Atty. Gen. 654.

The railroad revolving fund provided for in section 15A of Title 49, Transportation, does not fall within the provisions of this section. (1922) 33 Op. Atty. Gen. 316.

4. Effect of deposit.—Where the Treasury gives to a collector of customs a peremptory admonition to deposit all moneys received by him in the Treasury, a deposit of "receipts for storage" will not be deemed a voluntary payment, though the collector be entitled to them as a portion of his compensation. Ellsworth v. U. S. (1878) 114 Ct. Cl. 382, affirmed (1880) 101 U. S. 170, 25 L. Ed. 862.

5. Liability of officers.—This section does not make a customs collector liable on his bond for the loss of part of the contents of an express package before it reaches the Assistant Treasurer to whom it is properly addressed by the collector who followed directions in making up the package and in taking a receipt for the same from the express company. U. S. v. Brendel (N. Y. 1905) 136 F. 737, 738, 69 C. C. A. 389.

Federal officers holding the public money as money of the United States are only accountable to the United States. Vasse v. Comegyss (C. C. Dist. Col. 1825) Fed. Cas. No. 16,894.

Where a receiver of public money has such moneys in his hands, which would

not have been in his possession if he had paid them over with the promptness that the statutes and the treasury regulations made in pursuance of them, prescribing the duties of receivers in this respect, made it his duty to use, and which therefore, inasmuch as the duties of receivers under their official bonds are defined by those acts and treasury regulations, it was also his duty under his official bond to use, evidence that the moneys were forcibly taken from him by the agent of the so-called Confederate government, usurping the authority of the rightful government and compelling obedience to itself exclusively throughout the state in which the receiver was, was held to have been rightfully refused in a suit by the government on the official bond of such receiver, as short of meeting the necessity of the case; it having been owing to the default of the receiver in not paying over promptly and at right times, that the moneys were exposed to seizure, at all by the usurping government. Bevans v. U. S. (Ark. 1872) 13 Wall. 56, 20 L. Ed. 631.

In U. S. v. Morgan (La. 1850) 11 How. 154, 13 L. Ed. 643, in an action upon the bond of a collector of customs on the ground that the conditions of the bond had been broken by not paying over large sums of money collected for the United States and by not making seasonable returns of his accounts, the court characterized as an erroneous impression that the collector "was acting as a bailee, and under the responsibilities of only the ordinary diligence of a depositary as to the canceled notes, when in truth he was acting under his commission and duties by law, as collector, and under the conditions of his bond. The collector is no more to be treated as a bailee in this case than he would be if the notes were still considered for all purposes as money. He did not receive them as a bailee, but as a collecting officer. He is liable for them on his bond and not on any original bailment or lending. And if the case can be likened to any species of bailment in forwarding them, by which they were lost, it is that of a common carrier to transmit them to the treasury, and in doing which he is not exonerated by ordinary diligence but must answer for losses by larceny, and even robbery."

6. Liability on bond.—A bond of a receiver of public moneys conditioned for the faithful performance of his duties and that he shall keep safely and pay over all public money fixes an absolute liability to pay over such moneys, and he is not excused by the fact that such moneys are stolen from him without fault or negligence on his part and notwithstanding the fact that he had used ordinary care and diligence in keeping it. U. S. v. Prescott (Ill. 1845) 3 How. 578, 11 L. Ed. 734.

In U. S. v. Keehler (N. C. 1870) 9 Wall. 83, 19 L. Ed. 574, in an action upon a bond of a postmaster conditioned for the safe-keeping of public money at any time in his custody, the court said: "We cannot concede that a man who as a citizen owes allegiance to the United States and as an officer of the government holds its money or property, is at liberty to turn over the latter to an insurrectionary government which only demands it by ordinances and drafts drawn on the bailee, but which exercises no force or threat of personal violence to himself or property in the enforcement of its illegal orders."

In Boyden v. U. S. (Wis. 1872) 13 Wall. 17, 20 L. E. 527, which was an action upon a bond of a receiver of public money —the defense being that the receiver had been by irresistible force robbed of the money sued for—the court said: "Were a receiver of public moneys, who has given bond for the faithful performance of his duties as required by law, a mere ordinary bailee, it might be that he would be relieved by proof that the money had been destroyed by fire or stolen from him or taken by irresistible force. He would then be bound only to the exercise of ordinary care, even though a bailee for hire. The contract of bailment implies no more except in the case of common carriers, and the duty of a receiver, virtute officii, is to bring to the discharge of his trust that prudence, caution, and attention which careful men usually bring to the conduct of their own affairs. He is to pay over the money in his hands as required by law, but he is not insurer. He may, however, make himself an insurer by express contract, and this he does when he binds himself in a penal bond to perform the duties of his office without exception. There is an established difference between a duty created merely by law, and one to which is added the obligation of an express undertaking. The law does not compel to impossibilities, but it is a settled rule that if performance of an express engagement becomes impossible, by reason of anything occurring after the contract was made though unforeseen by the contracting party and not within his control, he will not be excused. * * * If, as we have seen, his liability is to be measured by his bond, and that binds him to pay the money, then the cause which renders it impossible for him to pay is of no importance, for he has assumed the risk of it."

In an action on the bond of an officer receiving public funds, the right of the government to recover does not rest on an implied contract of bailment, but on the express contract to pay over the funds. Smythe v. U. S. (1903) 188 U. S.

156, 23 S. Ct. 279, 47 L. Ed. 425, affirming (La. 1901) 107 F. 376, 46 C. C. A. 354; Bevans v. U. S. (Ark. 1872) 13 Wall. 56, 20 L. Ed. 531; Boyden v. U. S. (Wis. 1872) 13 Wall. 17, 20 L. Ed. 527; U. S. v. Keehler (Minn. 1870) 9 Wall. 83, 19 L. Ed. 573; U. S. v. Dashiel (Tex. 1866) 4 Wall. 182, 18 L. Ed. 319; U. S. v. Morgan (La. 1850) 11 How. 154, 13 L. Ed. 643; U. S. v. Prescott (Ill. 1845) 3 How. 578, 11 L. Ed. 734.

"The government in accepting bonds from an officer does not become an insurer to protect the sureties thereon against loss. The fact that a deputy steals or embezzles the public money or stamps, which are the equivalent of money under the charge of the collector, is wholly immaterial. The principal and his sureties are liable if the principal does not properly account therefor, no matter in what way or by whom the same may have been taken, unless it be by the act of God or the public enemy. The general rule upon this subject is to the effect that public officers who are intrusted with public funds and required to give bonds for the faithful discharge of their official duties are not mere bailees of the money to be exonerated by the exercise of ordinary care and diligence. Their liability is fixed by their bond. The fact that money is taken, embezzled, or stolen from them without any fault or negligence upon their part does not release them from liability on their official bonds." (Citing Bosbyshell v. U. S. [Pa. 1896] 77 F. 944, 23 C. C. A. 581, writ of error dismissed [1899] 19 S. Ct. 875, 43 L. Ed. 1186; U. S. v. Bryan [C. C. Cal. 1897] 82 F. 290, affirmed [Cal. 1898] 90 F. 473, 33 C. C. A. 617, 53 L. R. A. 218; U. S. v. Zabriskie [C. C. Nev. 1898] 87 F. 714; Smythe v. U. S. [La. 1901] 107 F. 376, 46 C. C. A. 354 [affirmed (1903) 23 S. Ct. 279, 188 U. S. 156, 47 L. Ed. 425], and authorities there cited; State v. Nevin [1885] 19 Nev. 162, 7 P. 650, 3 Am. St. Rep. 873, and authorities there cited.) Pond v. U. S. (Cal. 1901) 111 F. 989, 49 C. C. A. 582.

7. Recovery of fees paid into treasury.—A collector of customs who, pursuant to the peremptory order of the commissioner of customs, pays into the treasury moneys to which he is lawfully entitled as a part of the fees and emoluments of his office, is not precluded from recovering them in a suit against the United States. U. S. v. Ellsworth (Ct. Cl. 1880) 101 U. S. 170, 25 L. Ed. 862.

8. Disposition of Indian moneys.—Lumber made at the sawmill on the Grand Ronde Indian reservation being in fact the "property" of the Indians thereon, and not of the United States, the agent, subject to the instructions of the commissioner of Indian affairs, may dispose of it, and apply the proceeds to the support of the mill, or for the benefit of the Indians. U. S. v. Sinnott (C. C. Or. 1886) 26 F. 84, 86.

9. Set-offs against the government.—A claim of damages sustained by a public officer against the government cannot be set off against a legal demand. U. S. v. Wells (C. C. Pa. 1808) Fed. Cas. No. 16,663.

A set-off in a suit by the United States on a bill of exchange against a private individual, where the course required by the act for the settlement of accounts between the United States and receivers of public moneys has not been pursued, will be rejected. U. S. v. Barker (C. C. N. Y. 1816) Fed. Cas. No. 14,517.

An officer who has realized money on an execution in favor of the United States may retain it by way of set-off for fees of his office due him from the United States. U. S. v. Mann (C. C. Va. 1822) Fed. Cas. No. 15,716.

A party claiming a set-off against the government has the burden of showing that the claim has been presented to the accounting officers, and disallowed. U. S. v. Martin (C. C. N. Y. 1832) Fed. Cas. No. 15,732.

In an action by the government against an officer or individual to recover moneys claimed of him, defendant is entitled to an allowance of all equitable demands of his against the United States which have been disallowed by the accounting officers. U. S. v. Collier (C. C. N. Y. 1855) Fed. Cas. No. 14,833.

In such action defendant is entitled to a credit for moneys reasonable in amount paid by such officer, and for services rendered by him in good faith, in the proper discharge of his official duties. U. S. v. Corwin (C. C. Ohio, 1857) Fed. Cas. No. 14,870.

In an action to recover a balance due from a receiver of public moneys, a claim that a certain sum had been stolen from him, held not supported, he never having presented a claim for a credit of such amount. U. S. v. Reymert (C. C. N. Y. 1865) Fed. Cas. No. 16,149.

A receiver of public moneys is not entitled to offset rejected accounts for unauthorized clerk hire, fuel, lights, or for transmitted money. Office rent may be allowed under extraordinary circumstances. U. S. v. Lowe (C. C. Iowa, 1871) Fed. Cas. No. 15,635.

A defendant sued by the United States is not entitled to a finding in any form of a sum due him by the United States in excess of the claim for which he was sued. Schaumburg v. U. S. (C. C. Pa. 1878) Fed. Cas. No. 12,442, affirmed (1881) 103 U. S. 667, 26 L. Ed. 599.

Unliquidated damages arising from torts may be set off against a government claim, but such damages can only include actual loss, not anticipated profits. U. S. v. Buchanan (D. C. Pa. 1845) Fed. Cas.

No 14,678. For same case at later stage. see (1850) 8 How. 83, 12 L. Ed. 997.

Government agent must be reimbursed damages paid in consequence of protest of bill of exchange authorized to be drawn by him. Armstrong v. U. S. (D. C. Pa. 1833) Fed. Cas. No. 548.

Claims against the government are not admissible as a set-off which have not previously been presented to and disallowed by the proper accounting officer, except in the case of absence from the United States, or unavoidable accident preventing such presentation, but rejection does not preclude the claim being used as a set-off. U. S. v. Smith (D. C. Ohio, 1856) Fed. Cas. No. 16,321.

10. **Presumptions.**—In an action by the United States to recover dividends on corporate stock owned by it, it will be presumed that the money to be recovered will be paid into the national treasury as public money. U. S. v. Chesapeake & D. Canal Co. (D. C. Del. 1913) 206 F. 964.

§ 485. Receipts from private messages sent over Government lines. All moneys received for the transmission of private dispatches over any and all telegraph lines owned or operated by the United States, shall be paid into the Treasury of the United States, as required by section 484 of this title. (Mar. 3, 1883, c. 143, 22 Stat. 616.)

Historical Note

This was a proviso annexed to an appropriation for maintenance and repair of telegraph lines, in the sundry civil appropriation act for the fiscal year 1884, cited to the text.

Cross-References

A provision permitting transmission of private messages over telephone lines controlled by the Treasury Department, and requiring the proceeds thereof to be paid into the Treasury, is contained in section 486 of this title.

§ 486. Private messages over telephone lines controlled by Treasury Department. Private messages may, with the consent and authority of the Secretary of the Treasury, be transmitted over any and all telephone lines controlled by the Treasury Department, whenever it does not interfere with Government business, at such rates and on such terms and conditions as may from time to time be fixed by the Secretary of the Treasury, the proceeds thereof to be accounted for and paid into the Treasury of the United States. (Apr. 28, 1904, c. 1762, § 1, 33 Stat. 460.)

Historical Note

This was a proviso annexed to an appropriation for establishing new life-saving stations, etc., in the sundry civil appropriation act for the fiscal year 1905 cited to the text.

§ 487. Proceeds of sales of material. All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of revenue cutters,* or of the sales of commissary stores to the officers and enlisted men of the Army, or of materials, stores, or supplies sold to officers and soldiers of the Army or of the sale of condemned Navy clothing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, or of sales for which a different provision for the deposition† of the proceeds is made, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of "proceeds of Government property," and shall not be withdrawn or applied, except in consequence of a subsequent appropriation made by law. (R. S. § 3618; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249.)

* "revenue cutters" should be "Coast Guard cutters."
† "deposition" should be "disposition."

Historical Note

This is R. S. § 3618 (Act March 3, 1847, c. 48, § 1, 9 Stat. 171; Act April 20, 1866, c. 63, §§ 1, 2, 14 Stat. 40; Act July 28, 1866, c. 299, § 25, 14 Stat. 336; Act May 8, 1872, c. 140, § 5, 17 Stat. 83; Act June 8, 1872, c. 348, 17 Stat. 337), as amended by Act Feb. 27, 1877, c. 69, cited to the text.

The amendment consisted of the insertion of the words "or of materials, stores, or supplies sold to officers and soldiers of the Army."

Upon incorporation into the Code, the words "or of sales for which a different provision for the deposition [disposition] of the proceeds is made" were evidently inserted to cover possible exceptions other than those specified. See the cross-references.

By Act Jan. 28, 1915, c. 20, § 1, 38 Stat. 800, the Coast Guard was established in lieu of the Revenue-Cutter Service and Life-Saving Service, and revenue cutters are now known as Coast Guard cutters. See Act Jan. 26, 1927, c. 58, Title I, 44 Stat. 1035, and other recent appropriation acts.

Cross-References

The payment, out of the proceeds of the sale of old material, etc., or other public property, of the expenses of such sales, is authorized by section 489 of this title.

Provisions for the sale and disposition of the proceeds of unserviceable ordnance stores, materials, etc., are contained in chapter 5 of Title 50, War.

Moneys arising from disposition of serviceable ordnance and ordnance stores are to constitute one fund on the books of the Treasury Department, available to replace ordnance and ordnance stores, by a provision of section 73 of Title 50, War.

A similar provision relating to moneys arising from dispositions of medical and hospital supplies, is set forth in section 1285 of Title 10, Army.

All funds received as the value of military stores transferred by the several staff departments of the Army to the Insular Department of the Philippines are to be deposited in the Treasury, and remain available during the fiscal year and the following year for the procurement of like military stores to replace those so transferred, by a provision of section 1288 of Title 10, Army.

Moneys arising from deductions made from carriers on account of loss of or damage to military stores in transit are to be credited to the proper appropriation or funds out of which such or similar stores should be replaced, by a provision of section 1289 of Title 10, Army.

The sale of arms, equipments, etc., of the militia, and the disposition of the proceeds of such sale, are governed by section 47 of Title 32, National Guard.

The sale of old materials by the Secretary of the Navy, and the disposition of the proceeds thereof are prescribed by section 544 of Title 34, Navy.

The sale of old vessels of the Navy, and the disposition of the proceeds thereof, are governed by section 492 of Title 34, Navy.

The disposal of condemned articles of the Coast Guard, and the disposition of the proceeds thereof, are prescribed by sections 108 and 109, of Title 14, Coast Guard.

The sale of machinery or material in the Government Printing Office condemned as unserviceable, and the payment of the proceeds into the Treasury, are provided for, and receipts from sales of extra copies of documents, etc., and of old and condemned material are required to be deposited in the Treasury, and a statement thereof reported to Congress, by the Public Printer, by sections 56 and 57 of Title 44, Public Printing and Documents.

Government property at any Indian reservation, not required for the benefit of the Indians, may be transferred to another reservation, or sold and the proceeds covered into the Treasury, by section 191 of Title 25, Indians.

Statements of all moneys received by the head of each Executive Department or other government establishment from proceeds of public property or other sources, and of all payments made from such funds, are required, by section 626 of this title.

The proceeds of the sale of surplus cuttings of material for clothing manufactured by the Quartermaster Corps of the Army are to be deposited to the credit of that appropriation out of which the material was purchased, by section 488 of this title.

Notes of Decisions

1. Application to earnings of Indian schools.—This act, as respects the proceeds of sales of articles manufactured in Indian manual and training schools, is superseded by section 104 of Title 25, Indians. (1883) 17 Op. Atty. Gen. 531.

The proceeds of sales of articles manufactured in Indian manual and training schools should not be turned into the treasury, but be received by the Indian bureau and used for the benefit of the Indian children in the schools. Id.

2. Reimbursement of appropriation.—Where one Department receives from another supplies which are within the scope of appropriations belonging to each, the section does apply to a reimbursement of the appropriation of the one from the appropriation of the other of the cost of

such supplies. (1882) 17 Op. Atty. Gen. 480.

3. Property to which applicable.—Lumber made at the Grand Ronde reservation, at a sawmill erected by the United States under the treaty with the Indians, is not the property of the United States, under this section. U. S. v. Sinnott (C. C. Or. 1886) 26 F. 84, 89.

This section does not authorize the President or Secretary of War to sell improvements on a military post afterwards ascertained to be on land covered by a Mexican land grant. (1891) 20 Op. Atty. Gen. 284.

4. Disposition of old materials in general.—This section and R. S. sec. 1541 (probably superseded) were held to confer upon the Secretary of the Navy the only authority by which he could dispose of the materials of the United States navy. When in the judgment of the secretary they can be advantageously used, they must be used; when they cannot be so used, they must be sold at public sale and the proceeds covered into the treasury. No officer of the Navy Department had any authority, therefore, to deliver to the appellant the materials of the navy, to be sold by him, and to allow him to put the proceeds into his own pocket. Steele v. U. S. (1885) 113 U. S. 128, 5 S. Ct. 396, 28 L. Ed. 952, affirming (1884) 19 Ct. Cl. 181.

"These sections [this section and section 625 of this title] contemplate that there will be sales of old material necessarily made in the various departments of the government other than those included within the exceptions. For the mode in which such sales shall be conducted, whether by advertisement, at public auction, or otherwise, no specific provision is made. In these respects the sales are left to the discretion of the officer having charge of such old material. But it is required that when such sales are made the proceeds shall be covered into the treasury on account of 'proceeds of government property,' and that a detailed statement of them shall be thereafter made." (1877) 15 Op. Atty. Gen. 322.

There is no legal objection to the mere transfer from one bureau or department of the government to another department of real or personal property no longer needed for the purposes for which it was appropriated. Such a transfer is not a sale and is not open to the objection that public property cannot be disposed of without the authority of Congress. (1921) 32 Op. Atty. Gen. 511.

5. Sales.—The navy agent at New York is not competent to become a purchaser at a sale made by himself on account of the government. (1844) 4 Op. Atty. Gen. 351.

"The sales which are included within the exceptions in this section are controlled by other sections which regulate the mode in which the sales of such property shall be made and the proceeds thereof applied." (1877) 15 Op. Atty. Gen. 322.

6. Exchange for new material.—The transfer of old material in the navy in payment of work done or to be done, or in exchange for other material, is in effect prohibited; so a naval constructor who turns over material to the contractor must account for it. Steele v. U. S. (1884) 19 Ct. Cl. 181, affirmed (1885) 113 U. S. 128, 5 S. Ct. 396, 28 L. Ed. 952.

The Chief of the Bureau of Engraving and Printing cannot be authorized by the Secretary of the Treasury to exchange old presses for a new press with the manufacturers, so that but a small amount of money in addition will have to be paid to them therefor; yet that the Secretary may authorize a sale of the old presses to the manufacturers, the proceeds to be covered into the Treasury, and at the same time a purchase of the new press can be made from them, paying for the same out of the appropriation available for that purpose. (1877) 15 Op. Atty. Gen. 322.

7. Duty to account for material.—A party to whom has been delivered, without sanction of law, material of old ships, property of the United States to which he had no title whatever, by contract or otherwise, is accountable to the government for its full value, notwithstanding that his account has been settled by the officers of the navy department at a sum less than its full value; and, where he sells the property for an amount greatly in excess of the amount with which he has been charged in the settlement of his accounts, the excess may be set off by the United States in an action against it. Steele v. U. S. (Ct. Cl. 1885) 5 S. Ct. 396, 398, 113 U. S. 128, 28 L. Ed. 952.

Section 626 of this title, requiring the heads of executive departments or other government establishments to furnish the Secretary of the Treasury annually a statement of all money received by them during the previous fiscal year, arising from proceeds of public property, applies to sales, and purchases from the proceeds of sales, of commissary stores, under this section. (1906) 26 Op. Atty. Gen. 38.

§ 488. Proceeds of sale of surplus cuttings. The proceeds derived from the sale of surplus cuttings of material for clothing manufactured by the Quartermaster Corps of the Army shall be deposited

to the credit of that appropriation out of which the material was purchased. (Aug. 29, 1916, c. 418, § 1, 39 Stat. 635.)

Historical Note

This section was a provision of the Army appropriation act for the fiscal year 1917, cited to the text.

§ 489. Payment of expenses of sales from proceeds. From the proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, before being deposited into the Treasury, either as miscellaneous receipts on account of "proceeds of Government property" or to the credit of the appropriations to which such proceeds are by law authorized to be made, there may be paid the expenses of such sales, as approved by the General Accounting Office, so as to require only the net proceeds of such sales to be deposited into the Treasury, either as miscellaneous receipts or to the credit of such appropriations, as the case may be. (June 8, 1896, c. 373, § 1, 29 Stat. 268; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This was a provision of the deficiency appropriation act for the fiscal year 1896, cited to the text.

Upon incorporation into the Code, the words "accounting officers of the Treasury" were changed to "General Accounting Office" to conform to section 44 of this title.

Cross-References

A detailed statement of the proceeds of all sales of old material, etc., is required to be submitted to Congress at each regular session by section 625 of this title.

Notes of Decisions

1. Deduction of expenses from proceeds.—The Secretary of Agriculture should permit the states to reimburse themselves for their actual freight charges before remitting to him the net proceeds of surplus war materials transferred to the states for road improvement and sold by them at his direction for the account of the United States. (1923) 34 Op. Atty. Gen. 115.

§ 490. Penalty for withholding money. Every officer or agent who neglects or refuses to comply with the provisions of section 484 of this title shall be subject to be removed from office, and to forfeit to the United States any share or part of the moneys withheld, to which he might otherwise be entitled. (R. S. § 3619.)

Historical Note

This section of the Revised Statutes was derived from Act July 18, 1866, c. 201, § 40, 14 Stat. 187.

Notes of Decisions

1. Recovery of involuntary payment.—Viewed in the light of these penal provisions, payments made under a peremptory order of the Department could not be regarded as voluntary in the sense that the party making them was thereby precluded from maintaining an action to recover back so much of the money paid as he was entitled to retain. U. S. v. Ellsworth (Ct. Cl. 1880) 101 U. S. 170, 25 L. Ed. 862.

§ 491. Fees, fines, etc., payable into Treasury to credit of United States and District of Columbia. All fees, fines, and other miscellaneous items of revenue required by law prior to July 1, 1921, to be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts shall be paid for each fiscal year into the Treasury of the United States to the credit

of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia; and all collections on account of special assessments for public improvements for which assessments are levied according to the law shall be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as the appropriations used in paying for such assessment work are charged, respectively, against the revenues of the District of Columbia and the Treasury of the United States. (Feb. 22, 1921, c. 70, § 7, 41 Stat. 1144.)

§ 492. **Duty of disbursing officers.** Except as otherwise provided by law it shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or with one of the depositaries of the United States mentioned in section 476 of this title, and to draw for the same only as it may be required for payments to be made by him in pursuance of law and draw for the same only in favor of the persons to whom payment is made; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury. In places, however, where there is no treasurer or depositary, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depositary, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors. (R. S. § 3620; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249; May 29, 1920, c. 214, § 1, 41 Stat. 654, 655.)

Historical Note

This is R. S. § 3620 (Act June 14, 1866, c. 122, § 1, 14 Stat. 64) as amended by Act Feb. 27, 1877, c. 69, § 1, cited to the text.

The amendment inserted after the words "to be made by him in pursuance of law" the words "and draw for the same only in favor of the persons to whom payment is made."

Upon incorporation into the Code, references in several places to the assistant treasurers were omitted or changed to conform to Act May 29, 1920, c. 214, § 1, cited to the text.

A provision of Act July 9, 1918, c. 143, subchapter III, 40 Stat. 878, authorizing Army officers accountable for public moneys to intrust them to other officers during the existing emergency, and making both officers responsible therefor, was probably omitted from the Code as temporary and obsolete.

Cross-References

A disbursing officer unlawfully depositing, converting, loaning, or transferring public money is punishable for embezzlement by section 173 of Title 18, Criminal Code and Criminal Procedure.

Officers intrusted with the disbursement of funds for the subsistence of the Army may keep in their possession restricted amounts of such funds, by section 493 of this title.

In case of sickness or unavoidable absence of any disbursing clerk or disbursing agent in any executive department, etc., in Washington, D. C., the clerk of highest grade may be authorized to act in his place, by section 494 of this title.

Notes of Decisions

1. Effect of amendment.
2. Selection of depositaries.
3. Bond of depositary.
4. Depositary's liability.
5. Status of moneys deposited.
6. Who are disbursing agents.

7. Duty of disbursing officer.
8. Payments by disbursing officers.
9. Negotiation of disbursing agents' orders.
10. Obligation of treasurer to pay drafts.
11. Fraud of disbursing officer.
12. Liability of disbursing agent.
13. Right of government to recover payments.

1. Effect of amendment.—The amendment of this section restored the law in this respect to the condition in which it was before the revision of the statutes. (1877) 15 Op. Atty. Gen. 288.

"The immediate object of [the amendment] is that the books or vouchers of the assistant treasurers of the United States, public depositaries, or other persons or institutions with whom the disbursing officer might be authorized by the Secretary of the Treasury to deposit the public moneys should show upon whose account and upon what claims or demands such moneys were paid out by the check of the disbursing officer. These checks would thus when compared with the vouchers of the disbursing officer tend to show in what mode the public moneys had been disposed of by him, and would afford a means of testing the accuracy of his accounts." Id.

2. Selection of depositaries.—While a state bank cannot become a depositary of public money, it may lawfully contract with the secretary of the treasury to transmit a draft, or to draw on a fund at the place of payment and pay over the amount. U. S. v. City Bank (C. C. Ohio, 1854) Fed. Cas. No. 14,796. For same case at later stage, see (1858) 21 How. 356, 16 L. Ed. 130.

Under order of the treasury department disbursing officers may legally keep public moneys entrusted to them on deposit in banks theretofore selected by the treasury. (1837) 3 Op. Atty. Gen. 233.

Disbursing officers may legally make special deposits of their funds in non-specie-paying banks if so directed by the president. Id.

An agent of the government cannot require it to receive the credit of a bank or any other third party in place of that of himself and his sureties. (1854) 6 Op. Atty. Gen. 314.

Where a disbursing agent of the United States had paid public money into a bank, the government will not undertake to settle incidental matters of controversy between him and the bank, but leaves all such questions to courts of justice. Id.

The regulations of the Secretary of the Interior, providing for the designation by the town-site board of a bank for the depositing of money in the hands of the disbursing agent, must be construed in the light of this section to limit power of designation by the board to banks which are lawful depositaries. (1891) 20 Op. Atty. Gen. 24.

Any bank not restrained by its charter or other statutory provisions or by judicial process in receiving special deposits may enter into a contract for the safekeeping and return of a special deposit. (1837) 3 Op. Atty. Gen. 233.

3. Bond of depositary.—The Secretary of the Treasury may take security from state banks for the safety of the public deposits, in case they shall be made depositaries of the public moneys and fiscal agents of the government. (1833) 2 Op. Atty. Gen. 584.

4. Depositary's liability.—An action by the United States to recover the amount of a draft paid upon a forged signature will not lie against the banker who innocently collected the same, after the lapse of six years. U. S. v. Cooke (D. C. Pa. 1871) Fed. Cas. No. 14,855.

A bank cannot lawfully take public funds which have been deposited with it knowing them to be such and divert them from a public debt to the payment of a private debt of the public agent or a debt contracted by him in violation of law and of his duty to the government. (1854) 6 Op. Atty. Gen. 314.

5. Status of moneys deposited.—The moneys of the United States placed in the hands of an assistant quartermaster in the United States army for disbursement by him as a disbursing officer of the United States and deposited by him with an assistant treasurer of the United States, continue still to be moneys of the United States. Morgan v. Van Dyck (C. C. N. Y. 1870) 7 Blatchf. 147, 17 Fed. Cas. No. 9,810.

Each sum placed to the credit of a disbursing officer under warrants drawn by the Secretary of the Treasury, upon the treasury of the United States, directing certain amounts appropriated to be placed to the credit of the disbursing officer, constitutes a specific fund which cannot be legally appropriated to any other purpose than that authorized by law. U. S. v. Morgan (D. C. N. Y. 1886) 28 F. 48, affirmed (C. C. 1888) 35 F. 489.

6. Who are disbursing agents.—A deputy auditor of the Treasury detailed to disburse an appropriation for defraying the expenses of a commission which acts under the directions of the Secretary of the Navy does not hold two distinct offices if the statute making the appropriation does not create the office of disbursing agent. Whitaker v. U. S. (1892) 27 Ct. Cl. 524.

7. Duty of disbursing officer.—It is no part of the duty of disbursing officers intrusted with money with which to pay the salaries of public officers to take receipts in full for such salaries when a less amount is appropriated by Congress for that purpose and paid by them ac-

cordingly. Mitchell v. U. S. (1883) 18 Ct. Cl. 281, reversed on other grounds (1883) 109 U. S. 146, 3 S. Ct. 151, 27 L. Ed. 887.

8. Payments by disbursing officers.—Payments made by a disbursing officer in good faith, though excessive, may be legal. Jones v. U. S. (1906) 41 Ct. Cl. 493.

The Secretary of the Treasury may permit disbursing officers to draw, and the assistant treasurers and public depositaries to pay, checks made payable to themselves or bearer or order, for such sums as may be necessary to make payments of small amounts, to make payments at a distance from a depositary, or to make payments of fixed salaries due at a certain period (as authorized by Treasury regulations of August 24, 1876), provided such checks bear indorsed thereon the names of the persons to whom the sums are to be paid, or the claim upon which they are to be paid, or are accompanied by a list or schedule, made a part of the check, containing the same information. (1877) 15 Op. Atty. Gen. 303.

A disbursing officer of the United States holding a Treasury draft payable to the order of certain contractors cannot with propriety or safety be directed to turn it over to a receiver appointed by a state court in an action between contesting claimants. (1894) 21 Op. Atty. Gen. 75.

When an officer or employee of the government has been paid by a disbursing officer's check drawn in accordance with this section, such officer or employee has received his salary in the manner provided by law, and he is not entitled to reimbursement of the expense incurred by him in securing payment of the check so drawn. Hill v. U. S. (1926) 62 Ct. Cl. 412.

The Treasurers and Assistant Treasurers of the United States may be authorized to pay the checks of disbursing officers, where drawn in favor of the persons to whom payment is made, but payable to order or bearer; and whether such checks shall be made payable only to the persons entitled to payment, or to bearer, or to order, is a matter to be regulated entirely by the discretion of the Secretary of the Treasury. (1877) 15 Op. Atty. Gen. 288.

"If the evidence of the claim upon which the public money is paid is afforded by the check, all that is required by law has been complied with." Id.

Disbursing officers of the treasury are not authorized to draw, nor the treasurer to pay, from the specific appropriations any other sums than those authorized by law on account of the appropriations, respectively. U. S. v. Morgan (D. C. N. Y. 1886) 28 F. 48, affirmed (C. C. 1888) 35 F. 489. Where a federal officer who gave bond for the discharge of his duties, including the disbursing of certain appropriations, received moneys from passport fees and the sale of United States statutes, for which no bond was required, his draft on the appropriations fund, to cover a deficiency in the passport fund, was void, and in an action against his sureties on the bond, no actual transfer appearing, they had a right to have the draft canceled and the accounts readjusted. U. S. v. Morgan (C. C. N. Y. 1888) 35 F. 489, affirming (D. C. 1886) 28 F. 48, 49.

Checks given by paymasters are valid obligations of the government, although dishonored for want of funds to the credit of the officers who issued them. (1865) 11 Op. Atty. Gen. 216.

9. Negotiation of disbursing agents' orders.—Checks of disbursing officers of the government drawn upon the public Treasury or an assistant treasurer of the United States may be properly indorsed and transferred by either the payee, indorsee, or by an agent of either, acting as such under a power of attorney from such payee or indorsee. (1899) 22 Op. Atty. Gen. 637.

10. Obligation of treasurer to pay drafts.—An assistant treasurer is not responsible to a disbursing agent for a breach of duty in not paying genuine drafts by the disbursing agent for moneys deposited. He is responsible only to the United States. The obligation of the assistant treasurer is an obligation to the United States and not to the disbursing agent, and there is nothing in the nature of a contract or agreement between the assistant treasurer and the disbursing agent which could be broken, so as to lay a foundation for an action of assumpsit. Morgan v. Van Dyck (C. C. N. Y. 1870) 7 Blatchf. 147, 17 Fed. Cas. No. 9,810.

11. Fraud of disbursing officer.—Where a federal disbursing agent drew checks in favor of fictitious payees on a federal deposit, and obtained the benefit thereof by forged indorsements, the government was not charged with notice of his knowledge with reference to the fraud. U. S. v. National Bank of Commerce of Seattle, Wash. (Wash. 1913) 205 F. 433, 123 C. C. A. 501.

12. Liability of disbursing agent.—If a public disbursing officer has lost his vouchers without fault, and has produced the best secondary evidence in his power, it is for the jury to find whether he has faithfully disbursed the moneys. U. S. v. Laub (C. C. Dist. Col. 1836) Fed. Cas. No. 15,568, affirmed (1838) 12 Pet. 1, 9 L. Ed. 977.

Where the officer is charged with money received from third persons, the evidence on which the charge is made must be stated. U. S. v. Hilliard (C. C. Ohio, 1843) Fed. Cas. No. 15,368.

A special disbursing agent of the board of town-site trustees of Oklahoma Ter-

ritory who deposited moneys received by him as such agent in two banks that suspended payment, is liable, with his sureties, for any loss that may arise from the failure of these banks, and he is not relieved from liability by the fact that these banks were designated by the board of trustees as places of deposit. (1891) 20 Op. Atty. Gen. 24.

If a disbursing officer in good faith, without knowledge or suspicion of a bank's insolvency, and without the expectation of gain, or other private motive, withdrew public moneys from the treasury and deposited them with the bank, it being a designated depository and the deposit being at that time authorized by law, the loss of the moneys through the failure of the bank cannot be imputed to the fault or negligence of the officer within the meaning of the Disbursing Officers Act (incorporated in sections 250 and 251 of Title 28, Judicial Code and Judiciary). Hobbs v. U. S. (1881) 17 Ct. Cl. 189.

It is not a good defense to an action on the bond of a paymaster in the army for not paying over or accounting for public moneys that come into his hands, that, without any want of proper care and diligence on his part, a certain part of the money had been stolen from him. U. S. v. Dashiel (Tex. 1866) 4 Wall. 182, 18 L. Ed. 319.

13. Right of government to recover payments.—A person entitled to recover money paid under a mistake of fact must give prompt notice of the discovery of the mistake to the person to whom the money was paid. U. S. v. Union Nat. Bank (D. C. N. Y. 1879) Fed. Cas. No. 16,597.

The person to whom the money is paid is discharged from liability where he sustains damage in the loss of his remedy over against another, through the neglect to give notice of the discovery of the mistake. Id.

The United States, suing to recover money so paid, is chargeable with such neglect equally with any other plaintiff. U. S. v. Union Nat. Bank (D. C. N. Y. 1879) Fed. Cas. No. 16,597.

Money paid by an agent under a mistake of the legal obligation of his principal may be recovered back by the latter. U. S. v. Bartlett (D. C. Me. 1839) Fed. Cas. No. 14,532.

An agent is liable for money received from an assistant treasurer of the United States upon the redemption of a stolen bond containing a forged indorsement, although the money has been paid over to the principal, upon the ground that such treasurer had no power to bind the United States by payment of the money, or to consent that such agent should pay the same over to his principal. U. S. v. Pinover (D. C. N. Y. 1880) 3 F. 305.

One who receives public money from a disbursing officer with knowledge that it has been applied in violation of law becomes indebted to the United States. Bayne v. U. S. (Md. 1877) 93 U. S. 642, 643, 23 L. Ed. 997.

§ 493. Officers permitted to keep funds for subsistence of the Army for payments of small amounts. Officers intrusted with the disbursement of funds for the subsistence of the Army may keep, at their own risk, in their personal possession for disbursement, such restricted amounts of subsistence funds for facilitating payments of small amounts to public creditors as shall from time to time be authorized by the Secretary of War. (Mar. 2, 1907, c. 2511, 34 Stat. 1166.)

Historical Note

This was a proviso annexed to an appropriation for purchase of subsistence supplies in the Army appropriation act for the fiscal year 1908, cited to the text.

§ 494. Acting disbursing officer in case of sickness or unavoidable absence of disbursing clerk or disbursing agent. In case of the sickness or unavoidable absence of any disbursing clerk or disbursing agent of any executive department, independent bureau, or office, in Washington, District of Columbia, he may, with the approval of the head of the department, independent bureau, or office, in which said disbursing clerk or agent is employed, authorize the clerk of highest grade employed therein to act in his place, and to discharge all the duties by law or regulations of such disbursing clerk or agent. The official bond given by the principal of the office shall be held to cover and apply to the acts of the person appointed to act in his place in such cases. Such acting officer shall, moreover, for the time being, be

subject to all the liabilities and penalties prescribed by law for the official misconduct in like cases, of the disbursing clerk or disbursing agent, respectively, for whom he acts, and such acting officer shall be required by the head of the department, independent bureau, or office, to give bond to and in such sum as the disbursing clerk or disbursing agent may require. (Mar. 4, 1909, c. 299, § 8, 35 Stat. 1027.)

Historical Note

This section was part of the sundry civil appropriation act for the fiscal year 1910, cited to the text.

Notes of Decisions

1. **Bonds.**—The premium to be paid on bond of an acting or deputy disbursing clerk is not governed by section 14 of Title 6, Official and Penal Bonds, relating to bonds running to the United States, and the rate may therefore be whatever the principal and surety agree upon; but the surety on such a bond should be one authorized by sections 6 to 8 of Title 6, or such personal surety as may be acceptable to the proper authorities. (1909) 27 Op. Atty. Gen. 624.

2. **Opening account.**—The responsibility of a temporary disbursing officer is precisely the same as that of the regularly appointed officer who has given his official bond with surety, and if his account has been erroneously settled it may be opened and any balance remaining due from him to the United States may be recovered in a regular course of legal proceedings. Ex parte Randolph (C. C. Va. 1833) 2 Brock, 447, 20 Fed. Cas. No. 11,558.

§ 495. Deposit of moneys with public depositary; receipts; postal revenues. Every person who shall have moneys of the United States in his hands or possession, and disbursing officers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer, or some public depositary of the United States, without delay, and in all cases within thirty days of their receipt. And the Treasurer or the public depositary shall issue duplicate receipts for the moneys so paid, transmitting forthwith the original to the Secretary of the Treasury, and delivering the duplicate to the depositor: *Provided,* That postal revenues and debts due to the Post Office Department shall be paid into the Treasury in the manner required by law. (R. S. § 3621; May 28, 1896, c. 252, § 5, 29 Stat. 179; May 29, 1920, c. 214, § 1, 41 Stat. 654, 655.)

Historical Note

This is R. S. § 3621 (Act March 3, 1857, c. 114, § 3, 11 Stat. 249) as amended by Act May 28, 1896, c. 252, § 5, cited to the text.

Prior to the amendment, it read as follows:

"Every person who shall have moneys of the United States in his hands or possession shall pay the same to the Treasurer, an assistant treasurer, or some public depositary, and take his receipt for the same, in duplicate, and forward one of them forthwith to the Secretary of the Treasury."

Upon its incorporation into the Code, references to the assistant treasurers were omitted as superseded by Act May 29, 1920, c. 214, § 1, cited to the text.

Cross-References

The payment into the Treasury of postal revenues, etc., is provided for by section 380 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

See, also, notes to sections 484 and 492 of this title.

1. **Proper depositaries.**—Government moneys in the hands of the assistant quartermaster for disbursement, deposited by him with an assistant treasurer of the United States, still continue to be moneys of the United States, and such treasurer is not liable in assumpsit to the depositor therefor. Morgan v. Van Dyck (C. C. N. Y. 1870) Fed. Cas. No. 9,810.

The Treasurer is the official custodian of public money for Congress, and unless money is in his custody, or in the custody of persons authorized by law to receive

it on behalf of the government, it is not in the possession of the government. Carver v. U. S. (1880) 16 Ct. Cl. 361, affirmed (1884) 4 S. Ct. 561, 111 U. S. 609, 28 L. Ed. 540.

National banking associations are "public depositaries," and disbursing officers may avail themselves of such associations, except for the deposit of receipts for customs. (1864) 11 Op. Atty. Gen. 23.

2. Applicability of statute.—This section cannot apply to public officers as to whom Congress has specifically provided some other and different method of disposing of moneys of the United States which may come to their hands. U. S. v. Brendel (N. Y. 1905) 136 F. 737, 738, 739, 69 C. C. A. 389.

3. Credits.—Moneys collected by the government on execution may be proved as a credit in a subsequent action on the same bond, against a different party to the bond, without exhibiting the voucher for such payment to the treasury department. Myers v. U. S. (C. C. Ohio, 1839) Fed. Cas. No. 9,996.

4. Pleading.—Though statutes oblige receivers to pay over when required by the Secretary of the Treasury, a declaration stating that the receiver has been often requested to pay, is enough after verdict, there having been general regulations in force at the time the bond here sued on was given, requiring receivers to pay at stated times. Boyden v. U. S. (Wis. 1872) 13 Wall. 17, 20 L. Ed. 527.

§ 496. **Accounts.** Except as otherwise provided, every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument, shall render his accounts monthly. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail, or otherwise, to the bureau to which they pertain, within ten days after the expiration of each successive month, and, after examination there, shall be passed to the General Accounting Office for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the General Accounting Office. In case of the nonreceipt at the General Accounting Office or proper bureau of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. Nothing herein contained shall, however, be construed to restrain the heads of any of the departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of departments, as the public interest may require. (R. S. § 3622; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249; July 31, 1894, c. 174, § 12, 28 Stat. 209; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This is R. S. § 3622 (Act July 17, 1862, c. 199, § 1, 12 Stat. 593; Res. March 2, 1867, No. 48, 14 Stat. 571; Act July 15, 1870, c. 295, § 15, 16 Stat. 334) as amended by Act Feb. 27, 1877, c. 69, § 1, and Act July 31, 1894, c. 174, § 12, cited to the text.

The Act of 1877 substituted the word "departments" for "department" in the last sentence.

The Act of 1894 struck out a provision for an extension of time for the rendition of accounts.

Upon incorporation into the Code, references to the Treasury and the accounting officers thereof were changed to refer to the General Accounting Office to conform to section 44 of this title.

The naval appropriation act for the fiscal year 1920, Act July 11, 1919, c. 9, 41 Stat. 153, contained the following provisions, applicable only to the period covered by the World War:

"The accounting officers of the Treasury Department are hereby authorized and directed to allow, in the settlement of the accounts of disbursing officers of the Navy and Marine Corps covering the period of the present emergency, such credits for payments to officers and enlisted men not ordinarily allowable under the statutes, as are certified to them by the Secretary of the Navy as having been incurred under military necessity, or as having been occasioned by accidental circumstances or conditions over which such disbursing officers had no control and for which they were not justly responsible: Provided, That the period of the present emergency as contemplated by this paragraph shall be regard-

ed as beginning on the 6th day of April, 1917, and as terminating six months after the expiration of the quarter in which peace is declared. And that nothing herein shall be construed to include payments under contracts for supplies or services."

Cross-References

The disbursing officers of the United States are to render their accounts quarterly, but the Secretary of the Treasury may direct all accounts to be rendered oftener than quarterly by section 497 of this title.

Notes of Decisions

1. Present force.—This section is still in force and indicates that an administrative audit is required by the executive departments and government establishments of all public accounts preliminary to their audit by the General Accounting Office (1924) 34 Op. Atty. Gen. 83.

2. Time for accounting.—The right of the Secretary of the Treasury, when, in his opinion, the circumstances of the case justify and require it, to extend the time prescribed for the rendition of accounts, does not authorize him to institute a new system of rendering accounts —e. g., by permitting disbursing officers to render their accounts bimonthly, quarterly, or at longer intervals, instead of monthly, as now required, but applies only to exceptional cases. (1878) 16 Op. Atty. Gen. 222.

The requirement that officers and agents of the United States to render accounts monthly is applicable to every officer who receives advances of public money to be disbursed, or who collects and receives fees and revenues which it is his duty to account for; and the requirement is not subject to direction of the Secretary of the Treasury, save in exceptional cases. (1890) 19 Op. Atty. Gen. 557.

"An examination of the language of the original statute shows that the ten days allowed after the expiration of each month is an extension of time given the officer for the purpose of enabling him to prepare his accounts, such language explicitly stating that it was the time within which the officer should mail or otherwise forward his accounts." (1878) 16 Op. Atty. Gen. 222.

3. Requiring additional accounts.—"The provision that no construction is to be given to the statute that shall restrain the head of any department from requiring such other returns or reports from the officer or agent subject to the control of such head as the public interest may require * * * is intended to enable the head of the department to require, where he may think the circumstances demand it, more frequent accounts, and is also a provision exceptional in its character." (1878) 16 Op. Atty. Gen. 222.

4. Settling of accounts.—After the accounts of an officer of the navy have been once stated and settled by the treasury department, the auditor has no power to open or resettle them of his own mere authority. Ex parte Randolph (C. C. Va. 1833) Fed. Cas. No. 11,558.

Where a disbursing officer undertook to appropriate by his drafts on the treasurer a part of the disbursing account to the discharge of his independent obligation for passport moneys, and the treasurer concurred in the act with full knowledge of the fact, but parted with no money and only made the corresponding entries in the books, the act was a fraud on the sureties and illegal as respects all who concurred in it. The United States having parted with nothing cannot claim in making up its account of the balance due on the disbursing agents' account the benefit of those illegal debits to the prejudice of the sureties, but the latter are entitled to have the disbursing accounts restated and the illegal debits canceled. U. S. v. Morgan (D. C. N. Y. 1886) 28 F. 48, affirmed (C. C. 1888) 35 F. 489.

By no act of the officer or of the Treasury Department or of both combined can official moneys collected by the officer and paid into the Treasury Department during one term of office be appropriated to the accounts of the other term to the prejudice of the sureties for the respective terms (citing U. S. v. January [Ky. 1813] 7 Cranch, 572, 3 L. Ed. 443; U. S. v. Irving [N. Y. 1843] 1 How. 250, 11 L. Ed. 120; Jones v. U. S. [Va. 1849] 7 How. 681, 12 L. Ed. 870; State v. Middleton's Sureties [1882] 57 Tex. 185); U. S. v. Morgan (D. C. N. Y. 1886) 28 F. 48, affirmed (C. C. 1888) 35 F. 489.

Where the accounting officers of the Treasury, in mistake of law, have certified a balance in favor of a party upon a contract or obligation which was invalid, and the party brings a suit founded upon the same contract, the defendants may set up as a counterclaim and recover back the money paid on the accounting officers' settlement ex equo et bono. McKee v. U. S. (1876) 12 Ct. Cl. 504, reversed on other grounds (1878) 97 U. S. 233, 24 L. Ed. 911.

When the accounting officers of the Treasury, in settling the accounts of a disbursing officer, have allowed an alleged payment upon a genuine receipt of the party to whom the money purports to have been paid, the latter cannot be suffered to claim the money in his own name on the pretense that he gave the receipt without actually receiv-

ing the money; his remedy being against the disbursing agent of the government. (1854) 7 Op. Atty. Gen. 40.

The property accounts of quartermasters in the army should be transmitted from the War Department to the proper accounting officers of the treasury for settlement—such settlement to be made by them, however, under the direction of the Secretary of War. (1871) 13 Op. Atty. Gen. 482.

The Act of June 11, 1878, c. 180, § 4, 20 Stat. 105 (local) requires the commissioners of the District of Columbia to render accounts for their disbursements thereunder to the accounting officers of the treasury for adjustment and settlement, which by implication may be in accordance with the laws and regulations and usages by which these officers are governed so far as the same are applicable to such accounts. (1883) 17 Op. Atty. Gen. 574.

5. **Presumptions from accounting.**—Presumptions arising from the showings of the books of the treasury department in account with a navy paymaster, considered, together with what evidence is necessary to rebut the same. U. S. v. Kuhn (C. C. Dist. Col. 1833) Fed. Cas. No. 15,545.

6. **Allowances.**—The secretary of the navy has authority to order the fourth auditor to allow a credit to a naval paymaster for extra official service; and an allowance so made is equivalent to an allowance by the secretary himself. U. S. v. Kuhn (C. C. Dist. Col. 1833) Fed. Cas. No. 15,545.

§ 497. Same; disbursing officers. All disbursing officers of the United States shall render their accounts quarterly; and the Secretary of the Senate shall render his accounts as otherwise provided; but the Secretary of the Treasury may direct any or all such accounts to be rendered more frequently when in his judgment the public interests may require. (Aug. 30, 1890, c. 837, § 4, 26 Stat. 413.)

Historical Note

This section was a part of the sundry civil appropriation act for the fiscal year 1891, cited to the text.

Cross-References

General provisions relating to accounts are made by section 496 of this title.

Notes of Decisions

1. **Present force.**—This section is still in force and indicates that an administrative audit is required by the executive departments and government establishments of all public accounts preliminary to their audit by the General Accounting Office. (1924) 34 Op. Atty. Gen. 83.

§ 498. Same; distinct accounts required. All officers, agents, or other persons, receiving public moneys, shall render distinct accounts of the application thereof, according to the appropriation under which the same may have been advanced to them. (R. S. § 3623.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1809, c. 28, § 1, 2 Stat. 535.

Cross-References

Annual reports by the heads of the Executive Departments to Congress of the expenditure of the contingent funds for those departments and the bureaus and offices therein are required by section 104 of Title 5, Executive Departments and Government Officers and Employees.

Officers, agents, etc., receiving public moneys appropriated by Army appropriation acts are required to account for the disbursement thereof according to the several distinct items of appropriation expressed in the acts, by section 499 of this title.

Notes of Decisions

1. **Present force.**—This section is still in force and indicates that an administrative audit is required by the executive departments and government establishments of all public accounts preliminary to their audit by the General Accounting Office. (1924) 34 Op. Atty. Gen. 83.

2. **Persons to whom applicable.**—There is no distinction between foreign and do-

mestic agents of the government, under Act 1809 (incorporated in part in this section) as to the mode of appointment and tenure of office. Armstrong v. U. S. (D. C. Pa. 1833) Fed. Cas. No. 548.

The provisions of this section are applicable to the commissioners of the District of Columbia and their bondsmen are liable to suit on their bonds with recovery of balances due on settlements of their accounts. (1883) 17 Op. Atty. Gen. 574.

The governor of the Virgin Islands need not render to the Comptroller General a distinct and detailed account of expenditures of the appropriation of $324,000 for expenses incident to the occupation of the Virgin Islands contained in the Naval Appropriation Act of Jan. 22, 1923. (1924) 34 Op. Atty. Gen. 217.

3. Discharge of private claims.—"This enactment plainly makes it unlawful for the persons embraced within its purview to appropriate the public money to the discharge of their own claims, unless a distinct appropriation for that purpose shall have been made by law." (1834) 2 Op. Atty. Gen. 663.

§ 499. Same; disbursements under Army appropriation Acts. All officers, agents, or other persons receiving public moneys appropriated by any Army appropriation Act shall account for the disbursement thereof according to the several and distinct items of appropriation expressed in such Act. (July 5, 1884, c. 217, 23 Stat. 113.)

Editorial comment.—Recent acts making appropriations for the Army have been entitled "An act making appropriations for the military and non-military activities of the War Department," etc. See Act Feb. 23, 1927, c. 167, 44 Stat. 1106. Perhaps the words "public moneys appropriated for the support of the Army" would be a proper rendition of the words "public moneys appropriated by any Army appropriation act."

Historical Note

This is from the Army Appropriation Act of July 5, 1884, c. 217, cited to the text.

Cross-References

See, also, section 536 of this title.

Provisions allowing payment of pressing obligations by disbursing officers of the Quartermaster's Corps, the Engineer Department and the Ordnance Department, in cases of insufficient balance under the proper appropriation, and authorizing the adjustment of the accounts of the disbursing officers, are contained in section 500 of this title.

§ 500. Payment of pressing obligations by certain disbursing officers. Whenever pressing obligations are required to be paid by a disbursing officer of the Quartermaster Corps, the Ordnance Department, or the Engineer Department and there is an insufficient balance to his official credit under the proper appropriation or appropriations for the purpose, he is authorized to make payment from the total available balance to his official credit, provided sufficient funds under the proper appropriation or appropriations have been apportioned for the expenditure by the Quartermaster General, the Chief of Ordnance, or of the Chief of Engineers, as the case may be. When such disbursements are made the accounts of the disbursing officer shall show the charging of the proper appropriations, the balances under which will be adjusted by the dispersing officer on receipt of funds or by the General Accounting Office. (Mar. 3, 1909, c. 252, 35 Stat. 747, 750; Mar. 3, 1911, c. 209, 36 Stat. 1056; Aug. 24, 1912, c. 391, § 3, 37 Stat. 591; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This is a combination of separate provisions concerning the Quartermaster's Department and the Ordnance Department contained in Act March 3, 1909, c. 252, cited to the text, and a provision concerning the Engineer Department contained in Act March 3, 1911, c. 209, also cited to the text.

By Act Aug. 24, 1912, c. 391, § 3, likewise cited to the text, the Quartermaster's De-

partment was consolidated with other departments and designated the Quartermaster Corps.

Upon incorporation of these provisions into the Code a reference to the accounting officers of the Treasury was changed to refer to the General Accounting Office to conform to section 44 of this title.

Provisions similar to those of this section but applicable to any disbursing officer of the Army during the then existing emergency were contained in Act July 9, 1918, c. 143, subchapter IV, 40 Stat. 878.

Cross-References

See, also, section 536 of this title.

§ 501. Payment by disbursing officers; settlement of transactions of Engineer Department. In the settlement of transactions between appropriations under the Engineer Department, or between the Engineer Department and another office or bureau of the War Department, or of any other executive department of the Government, payment therefor shall be made by the proper disbursing officer of the Corps of Engineers or of the office, bureau, or department concerned. (Apr. 27, 1914, c. 72, 38 Stat. 369.)

Historical Note

This was a provision of the Army appropriation act for the fiscal year 1915, cited to the text.

§ 502. Same; settlement of transactions of Signal Corps. In the settlement of transactions between appropriations under the Signal Corps, or between the Signal Corps and another office or bureau of the War Department, or of any other executive department of the Government, payment therefor shall be made by the proper disbursing officer of the Signal Corps, or of the office, bureau, or department concerned. (Aug. 29, 1916, c. 418, § 1, 39 Stat. 622.)

Historical Note

This was a provision of the Army appropriation act for the fiscal year 1917, cited to the text.

§ 503. Same; Military Academy. In settling transactions between appropriations for the support of the United States Military Academy and other bureaus of the War Department, or between the United States Military Academy and any other executive department of the Government, payment therefor shall be made by the disbursing officer of the United States Military Academy or of the office, bureau, or department concerned. (Aug. 11, 1916, c. 314, 39 Stat. 504.)

Historical Note

This was a provision of the Military Academy appropriation act for the fiscal year 1917, cited to the text.

§ 504. Same; Medical Department. In the settlement of accounts between the appropriations of the Medical Department and those of any other branch of the Army service, or any bureau or office of the War Department, or any other executive department or establishment of the Government, payment thereof may be made by the proper disbursing officer of the Medical Department or of the branch of the Army service, office, bureau, department, or establishment concerned. (Mar. 4, 1915, c. 143, § 1, 38 Stat. 1080.)

Historical Note

This was a provision of the Army appropriation act for the fiscal year 1917, cited to the text.

§ 505. Suits to recover money from officers. Whenever any person accountable for public money, neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account, the General Accounting Office shall institute suit for the recovery of the same, adding to the sum stated to be due on such account, the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of 6 per centum per annum, from the time of receiving the money until it shall be repaid into the Treasury. (R. S. § 3624; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This is R. S. § 3624, which was derived from Act March 3, 1797, c. 20, § 1, 1 Stat. 512. Upon its incorporation into the Code, the words "First Comptroller of the Treasury" were changed to "General Accounting Office" to conform to section 44 of this title.

Notes of Decisions

1. Object and nature of statute.
2. Persons to whom applicable.
3. Liability of officer.
4. Forfeiture of commissions.
5. Nature and form of remedy.
6. Notice of action.
7. Bar of action.
8. Prima facie case.
9. Credits.
10. Liability for interest.

1. Object and nature of statute.—This section, and section 506 of this title, have for their object the enforcement of the liabilities of officers who are accountable for public money; and, though extending to revenue officers, they cannot properly be regarded as revenue laws. (1878) 16 Op. Atty. Gen. 144.

Hence real estate, acquired by virtue of proceedings thereunder against a collector of internal revenue, cannot be considered as acquired "in payment of debts arising under the laws relating to internal revenue" within the meaning of section 137 of Title 26, Internal Revenue, which refers to real estate acquired in payment of fines, taxes, penalties, and forfeitures incurred under the internal revenue laws. Id.

2. Persons to whom applicable.—A manufacturer who gave bond to pay for proprietary stamps furnished him on credit is not, in default of payment therefor, accountable for public money under this statute. U. S. v. Goldback (Va. 1881) 102 U. S. 623, 624, 26 L. Ed. 249.

A public officer, who receives money in advance for the contingencies of his office, is a receiver of public money within this statute. U. S. v. Lee (C. C. Dist. Col. 1824) Fed. Cas. No. 15,585.

The true construction of this section is that when a collector of internal revenue is sued upon his bond, he is sued as a person accountable for public money, and it is his accountability to the United States as a recipient of public money that renders him liable to suit, although in point of fact the money was received by him as a collector. (1878) 16 Op. Atty. Gen. 143.

3. Liability of officer.—Where money of the United States had been received by one public agent from another public agent, whether received in an official or private capacity, but received to the use of the United States, the United States may maintain an action against the receiver therefor. U. S. v. Buford (Ky. 1830) 3 Pet. 12, 29, 7 L. Ed. 585.

The United States cannot recover, as paid under mistake of law, money paid as salary to one who, was at least de facto, an officer. Badeau v. U. S. (Ct. Cl. 1889) 9 S. Ct. 579, 130 U. S. 439, 32 L. Ed. 997.

The allowance of items paid under order of the court is not reviewable in an action against the marshal by the government to recover the same as paid contrary to law. U. S. v. Hillyer (Alaska, 1893) 58 F. 678, 7 C. C. A. 428, distinguishing McMullen v. U. S. (Ct. Cl. 1892) 13 S. Ct. 127, 146 U. S. 360, 36 L. Ed. 1007.

Defendant was acting paymaster in the army at the Rock Island arsenal. The pay rolls were made up by a clerk appointed by the commanding officer, and, after being approved by such officer, were delivered to defendant for payment. His accounts for disbursements on account of such payments were allowed by the department, but it was subsequently discovered that the clerk, in making up the pay rolls, had entered after the names of certain workmen, as due them for wages, larger sums than were actually due,

and by some means had secured for himself the excess payments. After such discovery, and the trial and conviction of the clerk, defendant's accounts were, after 10 years' delay, restated, and suit was brought against him to recover the amount of the alleged shortage thereby shown. He was ignorant of the frauds, and received no benefit from the same. The evidence did not show with any certainty whether the clerk abstracted the money from the pay envelopes before it had been disbursed by defendant, or secured it after its disbursement in accordance with the pay rolls as approved, through collusion with the workmen or otherwise. Held, that the case was insufficient to charge defendant with liability. U. S. v. Butler (C. C. Me. 1902) 114 F. 582.

A district attorney is liable for money actually received, or money lost by his unwarrantable neglect; but he is not answerable for the default, inattention, or frauds of the marshal. U. S. v. Ingersoll (D. C. Pa. 1837) Fed. Cas. No. 15,440.

The discharge of public debtors by a district attorney before or after judgment is not of itself a ground of liability on his part to the government. Id.

Defendant, having wrongfully paid over money belonging to the United States to a third person, was liable to the government therefor, under the rule that, where one of two innocent persons must suffer by the act of a third person, he who puts it in the power of the third person to inflict the injury must bear the loss. U. S. v. Tripod Paint Co. (D. C. Ga. 1912) 199 F. 201.

4. Forfeiture of commissions.—Where an officer refuses to pay over the balance found due upon the adjustment of his account he forfeits the commissions due on such unsettled account only. U. S. v. Wendell (C. C. N. H. 1864) Fed. Cas. No. 16,666.

"Commissions on customs were intended as a compensation for a faithful performance of the duty of the officer collecting the revenue, and are not due to an officer who has not collected nor received such revenue, but who, in violation of his duty, devolved its collection on his successor." (1850) 5 Op. Atty. Gen. 278.

5. Nature and form of remedy.—A collector being indebted to the government, an action at law should be brought against him for the apparent balance due. (1824) 1 Op. Atty. Gen. 639.

6. Notice of action.—A requirement of notice to account as a prerequisite to suit against a defaulter contained in the Act of 1795 held to have been abrogated. Smith v. U. S. (Mo. 1831) 5 Pet. 292, 299, 8 L. Ed. 130.

7. Bar of action.—Act Cuban Cong. June 9, 1902, granting amnesty of crimes committed during the period of intervention by citizens of the United States, and providing that the courts shall discontinue pending proceedings against such citizens, and that the supreme tribunal shall send down and the judges of examination shall send up to the respective courts the dossiers relating to accused persons of said citizenship, applied only to the punishment for crimes committed, and did not bar an action by the United States against one of its officers, stationed in Cuba during military occupation thereof, to recover moneys belonging to the United States, misappropriated by such officer. U. S. v. Neely (C. C. N. Y. 1903) 126 F. 221.

8. Prima facie case.—In an action against an army officer charged with accountability for supplies, the certificate of an auditor of the treasury department held to make a prima facie case. U. S. v. Du Perow (D. C. Ohio, 1913) 208 F. 895.

9. Credits.—No claim of a public officer for a credit can be admitted on a trial unless presented to and disallowed by the accounting officers of the treasury. U. S. v. Duval (D. C. Pa. 1833) Fed. Cas. No. 15,015.

Claim by a district attorney, for a credit for costs not taxed, but taxable, is not admissible in an action against him, unless it has been disallowed by the accounting officers. U. S. v. Ingersoll (D. C. Pa. 1837) Fed. Cas. No. 15,440.

10. Liability for interest.—Sureties on the bond of the superintendent of the mint in New Orleans conditioned for the faithful discharge of duties according to the laws of the United States must be deemed to have signed it in view of the requirement of this section that interest on any unpaid balance due from one accountable for public moneys shall be computed from the time when he receives such moneys. Smythe v. U. S. (La. 1903) 23 S. Ct. 279, 286, 188 U. S. 156, 47 L. Ed. 425, affirming (1901) 107 F. 376, 46 C. C. A. 354.

The government is entitled to interest on bonds given in liquidation of an account against an officer. U. S. v. Zantzinger (C. C. Dist. Col. 1843) Fed. Cas. No. 16,785.

A collector is not liable to pay interest on moneys received in the case of open and running accounts. U. S. v. Collier (C. C. N. Y. 1855) Fed. Cas. No. 14,833.

Sureties are not answerable for interest beyond the penalty of the bond, except such as accrued after notice of default of the principal. U. S. v. Hills (C. C. Mass. 1878) Fed. Cas. No. 15,369.

In a suit upon the official bond of a United States marshal for sums due on his fee and emolument account, interest should be allowed from the date when a balance was stated against him by the

treasury officials, although the amount found to be due is less than this balance. U. S. v. Fitzsimmons (C. C. Ga. 1892) 50 F. 381.

The rule applied that in an action by the United States against a disbursing officer to recover public funds which were abstracted from defendant's possession without his knowledge, and from which he received no benefit, where no demand is proved, interest is not recoverable prior to the date of the writ. U. S. v. Butler (C. C. Me. 1902) 114 F. 582.

Fees and emoluments, collected by the clerk of a United States District Court required to meet the expenses of his office therefrom and pay over the surplus to the United States, and deposited by him in a bank, are not "public moneys of the United States," so as to entitle the United States to interest paid thereon by the bank as an increment of its ownership. U. S. v. MacMillan (Ill. 1920) 40 S. Ct. 540, 253 U. S. 195, 64 L. Ed. 857, affirming (C. C. A. 1917) 251 F. 55.

§ 506. Distress warrant. Whenever any collector of the revenue, receiver of public money, or other officer who has received the public money before it is paid into the Treasury of the United States, fails to render his account, or pay over the same in the manner or within the time required by law, it shall be the duty of the General Accounting Office to cause to be stated the account of such officer, exhibiting truly the amount due to the United States, and to certify the same to the Solicitor of the Treasury, who shall issue a warrant of distress against the delinquent officer and his sureties, directed to the marshal of the district in which such officer and his sureties reside. Where the officer and his sureties reside in different districts, or where they, or either of them, reside in a district other than that in which the estate of either may be, which it is intended to take and sell, then such warrant shall be directed to the marshals of such districts, respectively. (R. S. § 3625; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249; July 31, 1894, c. 174, § 4, 28 Stat. 206; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This is R. S. § 3625 (Act May 15, 1820, c. 107, § 2, 3 Stat. 592; Act May 29, 1830, c. 153, § 1, 4 Stat. 414) as amended by Act Feb. 27, 1877, c. 69, § 1, and Act July 31, 1894, c. 174, § 4, cited to the text.

The amendments related to the officer or officers who should cause the account to be stated. As last amended, this duty was imposed on "the proper Auditor" but, upon incorporation into the Code, the quoted words were changed to "General Accounting Office" to conform to section 44 of this title.

Notes of Decisions

1. Validity and operation in general.—This statute is not inconsistent with that part of the Constitution which prohibits a citizen from being deprived of his liberty or property without due process of law. Murray v. Hoboken Land, etc., Co. (N. J. 1856) 18 How. 272, 15 L. Ed. 372; U. S. v. Dillin (Tenn. 1909) 168 F. 813, 94 C. C. A. 337.

Congress did not by this section make it conclusive that summary process was unnecessary, to enable the legislative department to exercise its function of laying and collecting taxes, duties, imposts, and excises, since it merely authorizes a suspension of such proceedings until, by judicial inquiry, the fact of the indebtedness is determined. Murray's Lessee v. Hoboken Land & Improvement Co. (N. J. 1856) 59 U. S. (18 How.) 272, 15 L. Ed. 372.

Congress has authority to provide for the collection from its officers of public revenues of which they are in default of payment by the issuance of a warrant of distress, by the solicitor of the treasury directing a levy on the property of such officer in default and his sureties. Id.

The auditing of the accounts of a collector of customs, the ascertainment of the balance due, and the issuance of a warrant of distress under Act May 15, 1820 (incorporated in part in this section) are not judicial acts, and the act was not invalid as vesting judicial acts in executive officers of the government. Id.

The summary proceedings authorized by this statute were designed to secure the interests of the government, in cases where the ordinary process of law would

be inadequate; to provide for such emergencies the treasury department is vested with extraordinary powers and to guard against the abuse of which the remedy by injunction is provided. U. S. v. Nourse (Dist. Col. 1832) 6 Pet. 470, 492, 8 L. Ed. 467.

Summary proceedings, being statutory, in derogation of common law, must conform strictly to the statute, and the record must affirmatively show a compliance therewith. U. S. v. Ingate (C. C. Ala. 1891) 48 F. 251.

"The article of the Constitution requiring an oath or affirmation for a warrant, has no application to proceedings for the recovery of debts, where no search warrant is used." Murray v. Hoboken Land, etc., Co. (N. J. 1856) 18 How. 272, 15 L. Ed. 372.

In U. S. v. Taylor (C. C. Ind. 1845) 3 McLean, 539, 28 Fed. Cas. No. 16,440, it was said that "the statement of an account is a ministerial duty and also the issuing of a warrant, but the exercise of a judgment whether the case comes within the statute can scarcely be held a ministerial act. There are indeed many acts required to be done by treasury officers which partake more of a judicial than a ministerial character. Treasury officers of necessity decide on claims on the evidence produced. * * * Practically the treasury officers who act upon these exercise judicial powers—not in form but in substance."

"A warrant is authorized to be issued against the defaulter without notice and without investigation, except merely turning to the books of the treasury and ascertaining the amount charged. And under the warrant the goods and chattels, lands and tenements, of the defaulter are taken and sold on short notice; and if the sale of these be insufficient to pay the amount due, his body is taken and imprisoned. And this warrant also authorizes the marshal to take the goods and chattels, lands and tenements, of the surety and sell them on short notice. Here is no inquiry as to the due execution of the bond by the surety or the amount which his principal owes. He may have claims of set-off against a part or the whole of the sum claimed." U. S. v. Taylor (C. C. Ind. 1845) 3 McLean, 539, 28 Fed. Cas. No. 16,440.

This section has for its object the enforcement of the liabilities of officers who are accountable for public money, and, though extending to revenue officers, cannot be regarded as a revenue law. (1878) 16 Op. Atty. Gen. 143.

2. Bonds.—Under an obsolete provision of the Act of 1820 (incorporated in part in this section) see U. S. v. Maurice (C. C. Va. 1823) Fed. Cas. No. 15,747.

3. Authority of agents of treasury.—Under provisions of the Act of 1820 (incorporated in part in this section) not now in force, see Ex parte Randolph (C. C. Va. 1833) 2 Brock. 447, 20 Fed. Cas. No. 11,558; (1823) 1 Op. Atty. Gen. 612, 613.

4. Conclusiveness of accounting.—This law does not contemplate any appeal to the President, and the decision of the Comptroller (now General Accounting Office) is conclusive upon the executive branch of the government. (1832) 2 Op. Atty. Gen. 507.

5. Persons to whom applicable.—This and the following sections relating to the same matter cannot be construed to apply only to persons who are officers of the government at the time the warrant is issued so as to exclude from their operation officers found delinquent at the close of their terms. U. S. v. Dillin (Tenn. 1909) 168 F. 813, 816, 94 C. C. A. 337, reversing Ex parte Dillin (C. C. Tenn. 1908) 160 F. 751.

This statute does not apply to a mere acting purser in the navy. Ex parte Randolph (C. C. Va. 1833) Fed. Cas. No. 11,558.

6. Warrant and proceedings thereunder.—A levy on real estate under a distress warrant issued by the solicitor of the treasury against a collector of the customs from whom a balance of account has been found to be due by accounting officers of the treasury, and the marshal's return that he has so levied, are prima facie evidence of the regularity of the levy. Murray v. Hoboken Land & Imp. Co. (N. J. 1856) 59 U. S. (18 How.) 272, 15 L. Ed. 372.

A warrant issued under this section does not deprive an officer of his liberty or property without due process of law. Murray v. Hoboken Land & Imp. Co. (N. J. 1856) 59 U. S. (18 How.) 272, 15 L. Ed. 372; U. S. v. Dillin (Tenn. 1909) 168 F. 813, 94 C. C. A. 337, reversing Ex parte Dillin (C. C. 1908) 160 F. 751.

A warrant of distress has the effect of a judgment. Armstrong v. U. S. (D. C. Pa. 1833) Fed. Cas. No. 548.

7. —— Imprisonment.—See notes to section 508 of this title.

§ 507. Same; contents. The warrant of distress shall specify the amount with which such delinquent is chargeable, and the sums, if any, which have been paid. (R. S. § 3626.)

Historical Note

This section of the Revised Statutes was derived from Act May 15, 1820, c. 107, § 2, 3 Stat. 592; Act May 29, 1830, c. 153, § 1, 4 Stat. 414.

Notes of Decisions

1. **Validity.**—The act of which this section was a part was held constitutional. Den ex dem. Murray v. Hoboken Land and Improvement Co. (N. J. 1856) 18 How. 272, 276, 15 L. Ed. 372.

2. **Persons to whom applicable.**—See, also, notes under section 506 of this title.

This section and those subsequent, which provide that, when an officer fails to render his account or pay over money as required by law, a distress warrant shall issue against the delinquent officer and his sureties, which shall be levied on his property, and if not sufficient on the person of such officer, who may be committed to prison, applies to officers who are found delinquent at the close of their terms, as well as to persons actually in office. U. S. v. Dillin (Tenn. 1909) 168 F. 813, 94 C. C. A. 337, reversing Ex parte Dillin (C. C. 1908) 160 F. 751.

3. **Effect of warrant.**—See notes under section 506 of this title.

§ 508. **Same; execution against officer.** The marshal authorized to execute any warrant of distress shall, by himself or by his deputy, proceed to levy and collect the sum remaining due, by distress and sale of the goods and chattels of such delinquent officer; having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town and county where the goods or chattels were taken, or in the town or county where the owner of such goods or chattels may reside. If the goods and chattels be not sufficient to satisfy the warrant, the same may be levied upon the person of such officer, who may be committed to prison, there to remain until discharged by due course of law. (R. S. § 3627.)

Historical Note

This section of the Revised Statutes was derived from Act May 15, 1820, c. 107, § 2, 3 Stat. 593.

Notes of Decisions

See, also, notes to section 506 of this title.

1. **Imprisonment.**—"The Act of Congress authorizing the writ of habeas corpus to be issued 'for the purpose of inquiring into the cause of commitment,' [chapter 14 of Title 28, Judicial Code and Judiciary] applies" to cases of commitment under this Act. Ex parte Randolph (C. C. Va. 1833) 2 Brock. 447, 20 Fed. Cas. No. 11,558.

That one is under indictment for embezzlement as an officer of the United States and has given bail does not exempt him from imprisonment on a treasury distress warrant, where he is in the custody of the marshal of the same court, which can order his production for trial on the indictment at any time, and where neither the court nor the prosecuting officers object. U. S. v. Dillin (Tenn. 1909) 168 F. 813, 94 C. C. A. 337.

Section 843 of Title 28, Judicial Code and Judiciary, relating to imprisonment for debt on process from a federal court, does not apply to the imprisonment of a defaulting officer on a warrant issued under section 506 of this title. Id.

§ 509. **Same; execution against surety.** If the delinquent officer absconds, or if goods and chattels belonging to him can not be found sufficient to satisfy the warrant, the marshal or his deputy shall proceed, notwithstanding the commitment of the delinquent officer, to levy and collect the sum which remains due by such delinquent, by the distress and sale of the goods and chattels of his sureties; having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town or county where the goods or chattels were taken, or in the town or county where the owner resides. (R. S. § 3628.)

Historical Note

This section of the Revised Statutes was derived from Act May 15, 1820, c. 107, § 2, 3 Stat. 593.

Notes of Decisions

See, also, notes to section 506 of this title.

1. **Suretyship contract.**—A surety who signs the bond of an internal revenue collector does so in contemplation of the statute providing for these extraordinary remedies, and consents to their employment. U. S. v. Ingate (C. C. Ala. 1891) 48 F. 251.

§ 510. Levy to be lien. The amount due by any delinquent officer is declared to be a lien upon the lands, tenements, and hereditaments of such officer and his sureties, from the date of a levy in pursuance of the warrant of distress issued against him or them, and a record thereof made in the office of the clerk of the district court of the proper district, until the same is discharged according to law. (R. S. § 3629.)

Historical Note

This section of the Revised Statutes was derived from Act May 15, 1820, § 2, c. 107, 3 Stat. 593.

§ 511. Sale of lands regulated. For want of goods and chattels of a delinquent officer, or his sureties, sufficient to satisfy any warrant of distress issued pursuant to the foregoing provisions, the lands, tenements, and hereditaments of such officer and his sureties, or so much thereof as may be necessary for that purpose, after being advertised for at least three weeks in not less than three public places in the county or district where such real estate is situate, before the time of sale, shall be sold by the marshal of such district or his deputy. (R. S. § 3630.)

Historical Note

This section of the Revised Statutes was derived from Act May 15, 1820, c. 107, § 2, 3 Stat. 593.

§ 512. Conveyance of lands. For all lands, tenements, or hereditaments sold in pursuance of section 511 of this title, the conveyance of the marshal or his deputy, executed in due form of law, shall give a valid title against all persons claiming under such delinquent officer or his sureties. (R. S. § 3631.)

Historical Note

This section of the Revised Statutes was derived from Act May 15, 1820, c. 107, § 2, 3 Stat. 593.

§ 513. Disposal of surplus. All moneys which may remain of the proceeds of sales, after satisfying the warrant of distress, and paying the reasonable costs and charges of the sale, shall be returned to such delinquent officer or surety, as the case may be. (R. S. § 3632.)

Historical Note

This section of the Revised Statutes was derived from Act May 15, 1820, c. 107, § 2, 3 Stat. 593.

§ 514. Failure of disbursing officer to account. Whenever any officer employed in the civil, military, or naval service of the Government, to disburse the public money appropriated for those branches of the public service, respectively, fails to render his accounts, or to pay over, in the manner and in the times required by law, or by the regulations of the department to which he is accountable, any

sum of money remaining in his hands, it shall be the duty of the General Accounting Office, to cause to be stated and certified the account of such delinquent officer to the Solicitor of the Treasury, who is hereby authorized and required immediately to proceed against such delinquent officer, in the manner directed in sections 508 to 513 of this title. (R. S. § 3633; July 31, 1894, c. 174, § 4, 28 Stat. 206; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This is R. S. § 3633 (Act May 15, 1820, c. 107, § 3, 3 Stat. 594; Act May 29, 1830, c. 153, § 1, 4 Stat. 414) as amended by Act July 31, 1894, c. 174, § 4, cited to the text. The amendment struck out the words "First or Second Comptroller of the Treasury" and substituted "proper Auditor."

Upon incorporation into the Code the words last quoted were changed to "General Accounting Office" to conform to section 44 of this title.

Notes of Decisions

1. **Present force.**—This section is still in force and indicates that an administrative audit is required by the executive departments and government establishments of all public accounts preliminary to their audit by the General Accounting Office. (1924) 34 Op. Atty. Gen. 83.

2. **To whom applicable.**—"The Act does not apply in sound construction to every commissioned officer of the army or navy of the United States, to whose hands any public money may be intrusted, but only to those regularly appointed disbursing officers, who have given official bonds with sureties for the faithful discharge of the duties of their office; it does not embrace a mere acting purser in the navy." Ex parte Randolph (C. C. Va. 1833) 2 Brock. 447, 20 Fed. Cas. No. 11,-558.

3. **Bill in equity.**—No such remedies as are herein provided can be pursued in a bill in equity for a discovery and to set aside fraudulent conveyances. U. S. v. Ingate (C. C. Ala. 1891) 48 F. 251.

4. **Conclusiveness of account.**—After the auditor has settled the account of a public officer, it is not competent for him to open it, restate it, and to institute proceedings upon the restated account. Ex parte Randolph (C. C. Va. 1833) Fed. Cas. No. 11,558.

A bill in equity will lie to surcharge and falsify. Id.

§ 516. Extent of application of provision for distress warrants. All the provisions relating to the issuing of a warrant of distress against a delinquent officer shall extend to every officer of the Government charged with the disbursement of the public money, and to their sureties, in the same manner and to the same extent as if they were herein described and enumerated. (R. S. § 3634.)

Historical Note

This section of the Revised Statutes was derived from Act May 15, 1820, c. 107, § 3, 3 Stat. 594.

§ 517. Postponement of proceedings for nonaccounting. With the approval of the Secretary of the Treasury, the institution of proceedings by a warrant of distress may be postponed, for a reasonable time, in cases where, in his opinion, the public interest will sustain no injury by such postponement. (R. S. § 3635.)

Historical Note

This section of the Revised Statutes was derived from Act May 15, 1820, c. 107, § 3, 3 Stat. 594.

§ 518. Injunction to stay distress warrant. Any person who considers himself aggrieved by any warrant of distress issued under the foregoing provisions may prefer a bill of complaint to any district judge of the United States, setting forth therein the nature and ex-

tent of the injury of which he complains; and thereupon the judge may grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires. But no injunction shall issue till the party applying for it gives bond, with sufficient security, in a sum to be prescribed by the judge, for the performance of such judgment as may be awarded against him; nor shall the issuing of such injunction in any manner impair the lien produced by the issuing of the warrant. And the same proceedings shall be had on such injunction as in other cases, except that no answer shall be necessary on the part of the United States; and if, upon dissolving the injunction, it appears to the satisfaction of the judge that the application for the injunction was merely for delay, the judge may add to the lawful interest assessed on all sums found due against the complainant such damages as, with such lawful interest, shall not exceed the rate of 10 per centum a year. Such injunction may be granted or dissolved by the district judge either in or out of court. (R. S. § 3636.)

Historical Note

This section of the Revised Statutes was derived from Act May 15, 1820, c. 107, §§ 4, 5, 3 Stat. 595.

Notes of Decisions

1. Power of Congress to allow suit.—Though no suit can be brought against the United States without the consent of Congress, yet Congress may consent to have a suit brought to try the question whether the collector be indebted, that being a subject capable of judicial determination, and may empower a court to act on that determination and restrain the levy of the warrant of distress within the limits of the debt judicially found to exist. Murray v. Hoboken Land, etc., Co. (N. J. 1856) 18 How. 272, 15 L. Ed. 372.

2. Jurisdiction and powers of court or judge.—This section confers a power upon the court, and not upon the judge as an individual. Porter v. U. S. (C. C. N. Y.) Fed. Cas. No. 11,290.

"As the proceedings on this injunction in regard to the merits of the case are to be the same as in other cases of injunction and may be had before the judge out of court, and as the District Court possesses no chancery powers, the jurisdiction given by this Act must be limited by it." U. S. v. Nourse (Dist. Col. 1832) 6 Pet. 470, 8 L. Ed. 467.

The statute "gives to the district judge a special jurisdiction which he may exercise at his discretion—while holding the District Court or at any other time. Ordinarily, as district judge, he has no chancery powers; but in proceeding under this statute, he is governed by the rules of chancery which apply to injunctions, except no answer to the bill is required by the government." U. S. v. Cox (La. 1837) 11 Pet. 162, 9 L. Ed. 671.

The District Court has jurisdiction to enjoin, in whole or in part, the execution of a treasury warrant of distress whether the person complaining was or was not an officer against whom such a warrant might lawfully be issued. U. S. v. Nourse (Dist. Col. 1835) 9 Pet. 8, 9 L. Ed. 31.

3. Who may prefer bill of complaint.—"The sections which regulate the proceedings of the treasury department on the warrant, contemplate the officer against whom it may be issued and confine it to him; but when the legislature turns its attention to the individual against whom it may issue, the language of the law is immediately changed. The word person is substituted for officer. * * * The character of the individual against whom the warrant may be issued is entirely disregarded by this part of the Act. Be he whom he may, an officer or not an officer, a debtor or not a debtor; if the warrant be levied on his person or property, he is permitted to appeal to the laws of his country and to bring his case before the district judge to be adjudicated by him." U. S. v. Nourse (Dist. Col. 1835) 9 Pet. 8, 9 L. Ed. 31.

4. Proceedings on injunction.—The proceedings to be had on an injunction against further proceedings upon a warrant of distress issued from the Treasury Department should be the same as in other cases, except that no answer is necessary on the part of the United States. (1824) 1 Op. Atty. Gen. 694.

5. Burden of proof.—The bill of complaint of a debtor against whom a warrant of distress has been issued is in the nature of a motion to stay execution on a judgment, and the beginning and con-

clusion of the argument are with the debtor. The district attorney has nothing to show but his warrant of distress which is prima facie evidence of the debt and is already in possession of the court, being in the hands of its officer. The question before the court relates only to the continuance or removal of this warrant, not to the final settlement of the debt or balance between the parties. It is incumbent on the complainant to show that there are sufficient grounds for its removal in whole or in part. In this he is the actor. Armstrong v. U. S. (D. C. Pa. 1833) Gilp. 399, 1 Fed. Cas. No. 548.

6. Extent of relief.—"The judge who allows the injunction may extend it to the whole or a part of the demand of the government as the equity of the case may require." U. S. v. Nourse (Dist. Col. 1832) 6 Pet. 470, 8 L. Ed. 467.

7. Conclusiveness of decision.—The decision of a district judge granting an injunction is final, and bars further action by the government. U. S. v. Nourse (Dist. Col. 1835) 9 Pet. 8, 9, 9 L. Ed. 31.

The general law allowing appeals cannot be so construed as to enable the Supreme Court by appeal or writ of error to revise the proceedings of the district judge under this statute. U. S. v. Cox (La. 1837) 11 Pet. 162, 9 L. Ed. 671.

In Porter v. U. S. (C. C. N. Y.) 2 Paine, 313, 19 Fed. Cas. No. 11,290, however, it was held that the decision of the district judge awarding a perpetual injunction against a treasury warrant of distress is a final decree within a statute which allowed an appeal from all final judgments or decrees of a District Court to the Circuit Court.

On the hearing of a case a certain amount was adjudged to be due the United States which was paid by the defendant. The United States subsequently filed their petition for leave to file a bill of review, alleging that new and other evidence had been discovered since the hearing which it was not in their power to produce at that time. This application was refused because, as stated in the statement of the case, the statute did not vest in the District Court general and unlimited equity powers but merely gave a special authority which having been executed could not be reviewed by that court. U. S. v. Bullock (Ga. 1832) 6 Pet. 485 note, 8 L. Ed. 473, note.

§ 519. Proceedings on distress. When the district judge refuses to grant an injunction to stay proceedings on a distress warrant, as aforesaid, or dissolves such injunction after it is granted, any person who considers himself aggrieved by the decision in the premises may lay before the circuit justice, or circuit judge of the circuit within which such district lies, a copy of the proceeding had before the district judge; and thereupon the circuit justice or circuit judge may grant an injunction, or permit an appeal, as the case may be, if, in his opinion, the equity of the case requires it. (R. S. § 3637; Mar. 3, 1911, c. 231, § 289, 36 Stat. 1167.)

Historical Note

This is part of R. S. § 3637, which was derived from Act May 15, 1820, c. 107, §§ 4, 6, 3 Stat. 595; Act April 10, 1869, c. 22, § 2, 16 Stat. 44.

Upon incorporation into the Code, a provision concerning the proceedings to be had in the circuit court was evidently omitted as obsolete in view of Act March 3, 1911, c. 231, § 289, cited to the text, which abolished circuit courts.

Notes of Decisions

1. Appeal.—No appeal lies by the government from a decree of a district judge awarding an injunction. U. S. v. Nourse (Dist. Col. 1832) 6 Pet. 470, 490, 8 L. Ed. 467, reversing (C. C. 1831) 4 Cranch C. C. 151, 27 Fed. Cas. No. 15,901.

"As no appeal is given to the government in the statute by writ of error or otherwise, either to the Circuit or the Supreme Court, the decree of the district judge in favor of the defendant must be held final." U. S. v. Cox (La. 1837) 11 Pet. 162, 9 L. Ed. 671.

§ 520. Rights of United States reserved. Nothing contained in the provisions of this chapter relating to distress warrants shall be construed to take away or impair any right or remedy which the United States might have, by law, for the recovery of taxes, debts, or demands. (R. S. § 3638.)

Historical Note

This section of the Revised Statutes was derived from Act May 15, 1820, c. 107, § 9, 3 Stat. 596.

§ 521. Duties of officers as custodians of public moneys. The Treasurer of the United States, all depositaries designated in accordance with section 476 of this title, and those performing the duties of assistant treasurer, all collectors of the customs, all surveyors of the customs, acting also as collectors, all receivers of public moneys at the several land offices, all postmasters, and all public officers of whatsoever character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper department or officer of the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law. The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sums for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, comptrollers of customs, and surveyors of customs, Navy agents, Quartermaster General, registers of public lands, paymasters in the Army, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments. (R. S. § 3639; Aug. 24, 1912, c. 391;* § 3, 37 Stat. 591; Apr. 27, 1914, c. 72, 38 Stat. 356; May 29, 1920, c. 214, § 1, 41 Stat. 655; Sept. 21, 1922, c. 356, Title IV, § 523, 42 Stat. 974.)

* The semicolon following "c. 391" should be a comma.

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 6, 9 Stat. 60; Act July 3, 1852, c. 54, § 7, 10 Stat. 12; Act March 3, 1857, c. 114, § 2, 11 Stat. 249; Act April 21, 1862, c. 59, § 5, 12 Stat. 382; Act March 3, 1863, c. 96, § 5, 12 Stat. 770; Act July 4, 1864, c. 242, § 5, 13 Stat. 383; Act Feb. 19, 1869, c. 33, § 4, 15 Stat. 271.

Upon incorporation into the Code, a reference to Assistant Treasurers was changed to conform to section 476 of this title; the words "naval officers" were changed to "comptrollers of customs" to conform to section 38 of Title 19, Customs Duties; a reference to receivers of public lands was omitted to conform to section 71 of Title 43, Public Lands; and the words "commissary general" were changed to "Quartermaster General" to conform to Act Aug. 24, 1912, c. 391, § 3, cited to the text, which consolidated the office establishments of the Quartermaster General, the Commissary General, and the Paymaster General into a single bureau to be known as the Quartermaster Corps, and Act April 27, 1914, c. 72, also cited to the text, providing that the title of the Chief of the Quartermaster Corps should be Quartermaster General of the Army.

Cross-References

Failure of the Treasurer or any assistant treasurer or public depositary to keep safely public moneys is punishable as embezzlement by section 174 of Title 18, Criminal Code and Criminal Procedure, and unlawfully receiving from any disbursing officer, etc., any public money is punishable as embezzlement by section 182 of such title.

Notes of Decisions

1. Present effectiveness.
2. What duties included.
3. "Public moneys."
4. Liability of custodians.

5. Criminal responsibility.
6. Bonds.
7. —— Decisions under former statutes.
8. Depositories.
9. Placing bank funds in public treasury.
10. Navy agents.

1. Present effectiveness.—This section is still in force and indicates that an administrative audit is required by the executive departments and government establishments of all public accounts preliminary to their audit by the General Accounting Office. (1924) 34 Op. Atty. Gen. 83.

2. What duties included.—This statute intended to include such duties as naturally and ordinarily belong to the particular officer giving the bond, or have some obvious relation to such duty, and such as the sureties acquainted with the duties which are usually devolved by law upon the various public officers might reasonably be expected to contemplate at the time of executing the bond, as likely to be imposed upon their principal in case the exigencies of the government should require it; and not those duties which are usually imposed upon and more appropriately belong to an entirely different class of officers. U. S. v. Cheeseman (C. C. Cal. 1875) 3 Sawy. 424, 25 Fed. Cas. No. 14,790.

It can hardly be supposed that Congress intended that the words "all other duties as fiscal agents of the government which may be imposed by this or any other Act" should include the duties of collectors of customs, receivers of land offices and postmasters in case Congress should after giving the bond see fit to impose the duties of such officers on the assistant treasurer. Id.

This statute does not require a collector to act as agent for the transporting of money without some law directly imposing such duty upon him, or authorizing the secretary to do so in his discretion. The collector acting as such agent is only a private carrier responsible for ordinary care and diligence. U. S. v. Adams (C. C. Or. 1885) 24 F. 348.

3. "Public moneys."—Moneys collected from engineers and pilots under the Act of 1852, and the proceeds of forfeited goods under the revenue laws, paid to the deputy collector, are "public moneys," within the statute. U. S. v. Bowerman (D. C. Md. 1871) Fed. Cas. No. 14,630.

4. Liability of custodians.—A receiver of public moneys of the United States is bound to a higher responsibility than a mere bailee. Boyden v. U. S. (Wis. 1872) 13 Wall. 17, 22, 20 L. Ed. 527.

Under this section and the regulations of the Treasury Department made pursuant thereto, requiring collectors to deposit customs dues collected with the Treasurer or an Assistant Treasurer, using therefor a designated express company and forms of vouchers and waybills provided by the department, a collector who has followed such directions in making up a package, and in taking the receipt for the same from the express company, cannot be held liable on his bond for the loss of any part of the contents of such package before it reaches the Assistant Treasurer, to whom it is properly addressed. U. S. v. Brendel (N. Y. 1905) 136 F. 737, 69 C. C. A. 389.

A collector who pays over to his deputy the salary allowed him by the Secretary in conformity with previous rulings of the Comptroller cannot be made to refund it under subsequent and different rulings of the Comptroller. Hartson v. U. S. (1886) 21 Ct. Cl. 451.

There can be no recovery against the United States by a public officer for the loss of money by ordinary theft and robbery where the amount has been withheld from him by the accounting officers. Delaney v. U. S. (1895) 31 Ct. Cl. 44, affirmed (1896) 17 S. Ct. 84, 164 U. S. 282, 41 L. Ed. 435.

A special disbursing agent of the board of town-site trustees of Oklahoma Territory who deposited moneys received by him as such agent in two banks that suspended payment is liable, with his sureties, for any loss that may arise from the failure of these banks, and he is not relieved from liability by the fact that these banks were designated by the board of trustees as places of deposit. (1891) 20 Op. Atty. Gen. 24.

An assistant treasurer at a branch mint is, with his bondsmen, liable for money lost while in charge of his clerks. U. S. v. Butterfield (D. C. N. Y. 1874) Fed. Cas. No. 14,703.

Public officers are not responsible for the fraudulent transactions of their clerks where they are free from negligence. U. S. v. Brodhead (D. C. Mass. 1839) Fed. Cas. No. 14,654.

A postmaster held indictable for paying to letter carriers less than the amount provided by law, and requiring them to give vouchers for a sum greater than that paid to them. U. S. v. Mayers (D. C. Va. 1896) 81 F. 159, 160.

5. Criminal responsibility.—A clerk in the office of the collector of customs for the collection district of the city of New York is not a public officer within the meaning of this section and is not indictable as such for the unlawful conversion thereof. U. S. v. Smith (N. Y. 1888) 8 S. Ct. 595, 597, 124 U. S. 525, 31 L. Ed. 534.

6. Bonds.—The sureties in the bond of a receiver of public moneys at a land office were not liable for moneys received by him as proceeds of the sale of Indian lands made under the act of September 1, 1888, as such moneys were at all times,

in equity, the moneys of the Indians, and not public moneys. U. S. v. Rogers (Idaho, 1897) 81 F. 941, 27 C. C. A. 14.

It is a sound regulation, conformable to law, for the Secretary of the Treasury not to give up to the collectors their original bonds on the execution of new ones. (1844) 4 Op. Atty. Gen. 312.

Neither the act requiring bonds of collectors to be deposited in the office of the Comptroller, nor any other, authorizes a withdrawal of them, except for the purposes of suit. Id.

The sureties on the bond of an assistant treasurer of a branch mint held not liable for his default in the performance of duties as stamp agent. U. S. v. Cheeseman (C. C. Cal. 1875) Fed. Cas. No. 14,790.

Sureties on a collector's bond are not responsible for moneys lost or stolen, while being transported by the collector. U. S. v. Adams (C. C. Or. 1885) 24 F. 348.

7. —— Decisions under former statutes. —As to new bonds under Act July 4, 1840, c. 41, see (1840) 3 Op. Atty. Gen. 584; (1840) 3 Op. Atty. Gen. 586; (1840) 3 Op. Atty. Gen. 600; (1841) 3 Op. Atty. Gen. 610.

As to acceptance of bonds taken under the provisions of the thirty-seventh section of Act July 2, 1836, c. 270, see (1843) 4 Op. Atty. Gen. 187.

8. Depositories.—Regulations of the Secretary of the Interior for the designation of a town-site board of a bank for depositing money of a disbursing agent must be construed in the light of this section to limit the power of designation by boards to banks which are lawful depositories. (1891) 20 Op. Atty. Gen. 24.

Where the superintendent of a postal station deposited funds of his office in a bank which was not an authorized depositary in violation of law, which prohibits such deposits and makes it a criminal offense for bank officers to knowingly receive them, and the bank, at all times between the time of such deposits and the time it was closed as insolvent, had cash on hand in excess of the amount of the deposits, such cash held to have passed into the hands of the state bank commissioner impressed with a trust in favor of the United States for the amount of the deposits. Allen v. U. S. (C. C. A. Mass. 1923) 285 F. 678.

9. Placing bank funds in public treasury.—Where the cashier and a director of a bank collude to take its money and assets for their own fraudulent purpose of placing them temporarily in the government's treasury so as to hide an embezzlement of an officer there, the property of the bank in the money is not thereby divested. First National Bank of Newton v. U. S. (1880) 16 Ct. Cl. 54.

10. Navy agents.—The office of navy agent not having been created by law, there has been no law defining its duties from which to determine whether the navy agent at New York has or has not rendered extra services. (1819) 1 Op. Atty. Gen. 302.

In general, it is the duty of the navy agents to execute such instructions as they may from time to time receive from the executive departments. Id.

Where the agency is special and temporary the compensation must be regulated by contract. (1830) 2 Op. Atty. Gen. 320.

The Secretary of the Navy, however, under Act May 1, 1820, c. 52, might contract for clothing and subsistence of the navy; and when these supplies are to be furnished in places where there is no permanent agent, he must, of necessity, have the power to appoint a special agent to perform the duty. Id.

§ 522. Transfer of moneys from depositaries to Treasury. The Secretary of the Treasury may, except as provided in section 523 of this title, transfer the moneys in the hands of any depositary of public moneys to the Treasury of the United States to the credit of the Treasurer; and he may transfer moneys in the hands of one depositary to any other depositary, as the safety of the public moneys and the convenience of the public service shall seem to him to require. (R. S. § 3640.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 10, 9 Stat. 61.

Cross-References

Contracts for transportation of moneys, bullion, coin, etc., are required to be let to the lowest responsible bidder, by section 24 of Title 41, Public Contracts.

Notes of Decisions

1. Transfer of money.—Transfers of money to the Mint, by order of the President, for the purpose of coinage, in execution of the proviso to the twelfth section of the act of June 23, 1836 (chapter 115), should be made by drafts in the

same manner as from one deposit bank to another, the money so transferred remaining to the debit of the Treasurer as money in the Treasury. (1836) 3 Op. Atty. Gen. 144.

2. Character of depositary.—Depositary banks are not part of the Treasury of the United States, rendering the government liable for the safe-keeping or repayment of money deposited therein to the credit of the customers of these institutions, but money deposited by the government to the credit of public officers may be considered as public money, although not in the treasury. Branch v. U. S. (1876) 12 Ct. Cl. 281, affirmed (1880) 100 U. S. 673, 25 L. Ed. 759.

§ 523. **Postal deposits; transfer.** The Postmaster General may transfer money belonging to the Postal Service between the Treasurer and designated depositaries, at his discretion, and as the safety of the public money and the convenience of the service may require. (R. S. § 3641; May 29, 1920, c. 214, § 1, 41 Stat. 655.)

Historical Note

This is R. S. § 3641, which was derived from Act June 8, 1872, c. 335, § 56, 17 Stat. 292.

Upon incorporation into the Code, a reference to assistant treasurers was evidently omitted as superseded by Act May 29, 1920, c. 214, § 1, cited to the text, which abolished the office of assistant treasurer at certain cities.

§ 524. **Same; accounts.** Every depositary shall keep his account of the money paid to or deposited with him, belonging to the Post Office Department, separate and distinct from the account kept by him of other public moneys so paid or deposited. (R. S. § 3642.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 10, 9 Stat. 61.

§ 525. **Entry of each deposit, transfer, and payment.** All persons charged by law with the safekeeping, transfer, and disbursement of the public moneys, other than those connected with the Post Office Department, are required to keep an accurate entry of each sum received and of each payment or transfer. (R. S. § 3643.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 16, 9 Stat. 63.

§ 526. **Public moneys in Treasury and depositaries subject to draft of Treasurer.** All moneys paid into the Treasury of the United States shall be subject to the draft of the Treasurer. And for the purpose of payments on the public account the Treasurer is authorized to draw upon any of the depositaries, as he may think most conducive to the public interest and to the convenience of the public creditors. Each depositary so drawn upon shall make returns to the Treasury and Post Office Departments of all moneys received and paid by him, at such times and in such forms as shall be directed by the Secretary of the Treasury or the Postmaster General. (R. S. § 3644.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 10, 9 Stat. 61.

Notes of Decisions

1. Appropriations—Expenses chargeable against.—The expenses incurred in the examination of the books, accounts, etc., of the receivers of public money, arising from the sale of the public lands by designated agents of the Treasury De-

partment, under the subtreasury law, are chargeable to the appropriations for special agents to examine books, accounts, and money on hand in the several depositories under the law. (1851) 5 Op. Atty. Gen. 377.

2. Drafts against special appropriations.—Drafts against appropriations for specific purposes, used to pay moneys into the treasury owing on other accounts, and the debit thereof against such appropriations account, are illegal and unauthorized; and the sureties who are liable only on the appropriations account are entitled to have such debits canceled and the accounts readjusted, as the drafts effected no change in the actual balance in the treasury. U. S. v. Morgan (D. C. N. Y. 1886) 28 F. 48, affirmed (C. C. 1888) 35 F. 489.

§ 527. Presentment of drafts. It shall be the duty of the Secretary of the Treasury to issue and publish regulations to enforce the speedy presentation of all Government drafts, for payment, at the place where payable, and to prescribe the time, according to the different distances of the depositaries from the seat of Government, within which all drafts upon them, respectively, shall be presented for payment; and, in default of such presentation, to direct any other mode and place of payment which he may deem proper; but, in all these regulations and directions, it shall be his duty to guard, as far as may be, against those drafts being used or thrown into circulation as a paper currency or a medium of exchange. (R. S. § 3645.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 21, 9 Stat. 65.

Cross-References

Refusal of any person charged with the safe-keeping, transfer, or disbursement of public money to pay any draft, etc., drawn by the proper officer, or to transfer or disburse any such money promptly, is prima facie evidence of embezzlement, by section 180 of Title 18, Criminal Code and Criminal Procedure; and the acceptance or transmission to the Treasury Department, by any officer charged with the disbursement of public money, of any receipt or voucher from a creditor of the United States, without having paid to such creditor the full amount specified in such receipt or voucher, is an act of conversion, by section 181 of such title.

Notes of Decisions

1. Recovery on drafts.—When it is settled by the decree of court of competent jurisdiction that the holder of certain treasury drafts has no right or title to them, nor to the warrants or claims which they represent, and that such claims have been duly assigned to the present claimant, and that the drafts have never been indorsed by the payees, a prima facie right of recovery is established, though the drafts be still outstanding. Kinney v. U. S. (1884) 19 Ct. Cl. 671.

2. Order restraining indorsement.—An order of court restraining the indorsement of drafts delivered by the United States treasury to the beneficiary of a private act, pending an order to show cause why they should not be transferred to a receiver, does not contravene public policy by delaying the fiscal operations of the government. Forrest v. Price (1894) 52 N. J. Eq. (7 Dick.) 16, 29 A. 215, affirmed (1895) 53 N. J. Eq. 693, 35 A. 1130.

3. Requisites of check or draft.—Bill made in form of check, even if valid, is incomplete, and not commercial paper at all, until it has been indorsed and delivered to some person other than drawer. U. S. v. Chase Nat. Bank (D. C. N. Y. 1917) 241 F. 535, affirmed (C. C. A. 1918) 250 F. 105, and affirmed (1920) 40 S. Ct. 361, 252 U. S. 485, 64 L. Ed. 675, 10 A. L. R. 1401.

4. Forged draft.—Where sergeant, detailed to assist army officer authorized to draw upon treasury, forged officer's name to check, and also his indorsement, and then cashed check, held that, check having passed to defendant, who received payment from treasury, amount could not be recovered. U. S. v. Chase Nat. Bank (D. C. N. Y. 1917) 241 F. 535, affirmed (C. C. A. 1918) 250 F. 105, and affirmed (1920) 40 S. Ct. 361, 252 U. S. 485, 64 L. Ed. 675, 10 A. L. R. 1401.

§ 528. Duplicates for lost, stolen, or destroyed disbursing officers' checks or postal checks or warrants. Whenever any original check

is lost, stolen, or destroyed disbursing officers and agents of the United States are authorized, within three years from the date of such check, to issue a duplicate check, under such regulations in regard to its issue and payment, and upon the execution of such bond, with sureties, to indemnify the United States, and proof of loss of original check, as the Secretary of the Treasury shall prescribe: *Provided,* That whenever any original check or warrant of the Post Office Department has been lost, stolen, or destroyed the Postmaster General may authorize the issuance of a duplicate thereof, at any time within three years from the date of such original check or warrant, upon the execution by the owner thereof of such bond of indemnity as the Postmaster General may prescribe: *Provided further,* That when such original check or warrant does not exceed in amount the sum of $50 and the payee or owner is, at the date of the application, an officer or employee in the service of the Post Office Department, whether by contract, designation, or appointment, the Postmaster General may, in lieu of an indemnity bond, authorize the issuance of a duplicate check or warrant upon such an affidavit as he may prescribe, to be made before any postmaster by the payee or owner of an original check or warrant. (R. S. § 3646; Feb. 16, 1885, c. 123, 23 Stat. 306; Mar. 23, 1906, c. 1129, 34 Stat. 84; June 19, 1906, c. 3434, 34 Stat. 301; May 27, 1908, c. 206, 35 Stat. 415; Feb. 23, 1909, c. 174, 35 Stat. 644; Mar. 21, 1916, c. 52, 39 Stat. 37.)

Historical Note

This is R. S. § 3646 (Act Feb. 2, 1872, c. 12, § 1, 17 Stat. 29) as amended by the other acts cited to the text.

This section as originally enacted was not applicable to any check exceeding in amount the sum of $1,000. It was amended by making the amount $2,500, instead of $1,000, by Act Feb. 16, 1885, c. 123, cited above. It was further amended by Act March 23, 1906, c. 1129, to read as follows:

"Sec. 3646. Whenever any original check or warrant is lost, stolen, or destroyed, the Secretary of the Treasury may authorize the officer issuing the same, after the expiration of six months and within three years from the date of such check or warrant, to issue a duplicate thereof upon the execution of such bond to indemnify the United States as the Secretary of the Treasury may prescribe: Provided, That when such original check or warrant does not exceed in amount the sum of fifty dollars the Secretary of the Treasury may authorize the issuance of a duplicate at any time after the expiration of thirty days and within three years from the date of such check or warrant."

The further amendment by Act June 19, 1906, c. 3434, 34 Stat. 301, consisted in striking out the words "check or warrant," wherever they appeared in the section as previously amended, and substituting in lieu thereof the words "disbursing officers' check."

It was further amended by Act March 21, 1916, c. 52, to read as set forth above.

A provision of Act May 27, 1908, c. 206, 35 Stat. 415, amended both section 3646 and section 3647 of the Revised Statutes. This amendment was superseded by that of Act Feb. 23, 1909, c. 174, by which section 3646 was re-enacted and amended by adding to its provisions, as amended by Act June 19, 1906, c. 3434, the two last provisos substantially as set forth here, and section 3647 was also re-enacted and amended (see section 119 of this title).

Notes of Decisions

1. Exclusiveness of remedy.—The power given to an accounting officer to duplicate lost checks is not exclusive, nor does it affect the jurisdiction of the Court of Claims. Becker v. U. S. (1891) 26 Ct. Cl. 172.

2. Time for payment.—Where a government check or draft is lost or stolen, the statutes do not require that payment be postponed for 3 years or preclude a suit. Becker v. U. S. (1891) 26 Ct. Cl. 172.

3. Necessity for bond.—In case of the loss of an original check issued by a United States disbursing officer, the Secretary of the Treasury has no authority, under the provisions of this section; to dispense with the giving of a bond as a condition to the issuance of a duplicate check. 1913) 30 Op. Atty. Gen. 66.

§ 529. Advances of public moneys; prohibition against. Except as otherwise provided by law, no advance of public money shall be made in any case. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected. (R. S. § 3648.)

Historical Note

This section of the Revised Statutes was derived from Act Jan. 31, 1823, c. 9, § 1, 3 Stat. 723.

Act Oct. 6, 1917, c. 79, § 5, 40 Stat. 383, authorized the Secretaries of War and the Navy, during the then existing emergency, to make advance payments from available appropriations to contractors for supplies for their respective departments.

This section is not to apply to subscriptions for foreign and professional newspapers and periodicals nor to other payments made in compliance with the laws of foreign countries under which the military attachés are required to operate, to be paid from the appropriation for contingencies for the military intelligence division of the General Staff Corps; nor to subscriptions for foreign and professional newspapers and periodicals to be paid for from the appropriation for the Air Corps of the Army; nor to subscriptions for foreign and professional newspapers and periodicals to be paid for from the appropriation for the Engineer School, Corps of Engineers; nor to subscriptions for foreign and professional newspapers and periodicals to be paid for from the appropriation for the Coast Artillery School at Fort Monroe; nor to subscriptions for foreign, professional, and other newspapers and periodicals to be paid from appropriations for the Military Academy—by provisions in the War Department appropriation act, for the fiscal year 1928, Act Feb. 23, 1927, c. 167, Title I, 44 Stat. 1107, 1120, 1129, 1130. Similar provisions had been contained in prior acts.

Cross-References

The annual subscriptions for publications for the immigration service, the Department of Agriculture, the Quartermaster Corps, etc., may be paid in advance by section 530 of this title.

The president is authorized to direct advances to be made to persons employed in the Navy at distant stations, where the discharge of the pay and emoluments to which they are entitled cannot be regularly effected, by section 875 of Title 34, Navy.

Partial payments for work done under contract on the construction of vessels for the Treasury Department is authorized by section 542 of this title.

Advances from appropriations for the Department of Agriculture are restricted by section 533 of this title.

Payment for mileage books, commutation tickets, etc., purchased by the Secretary of the Navy to be furnished to officers and others ordered to perform travel on official business is not to be regarded as an advance of public money within the meaning of this section, by section 891 of Title 34, Navy.

Notes of Decisions

1. Construction and operation of statute in general.—The fund appropriated by the act of July 5, 1884 (23 Stat. 157), to defray the expenses of delegates to the Universal Postal Union Congress at Lisbon, Portugal, was subject to the restrictions as to advances contained in this section. (1884) 18 Op. Atty. Gen. 93.

Advances to foreign ministers are not within the act. (1829) 2 Op. Atty. Gen. 204; (1823) 1 Op. Atty. Gen. 620.

"The President of the United States having the foreign intercourse fund under his direction may advance to a minister going from the United States to a foreign country such part of his salary as he shall deem necessary to the proper fulfilment of public engagements in re-

spect to him." (1823) 1 Op. Atty. Gen. 620.

The Secretary of the Interior has no power to make requisitions on the judiciary fund for money to be advanced to United States marshals to be used in efforts to detect counterfeiters of United States Treasury notes. (1862) 10 Op. Atty. Gen. 225.

Despite the provisions of this section, a telegraph company had the legal right to put in force a system of local billing of government messages requiring in some instances the prepayment of such messages. (1921) 32 Op. Atty. Gen. 433.

The section requiring the especial direction of the President to authorize the advance of public moneys to disbursing officers is merely directory to the officers of the government and is not a qualification of the contract of the surety for such officer; and the surety is liable for the misappropriation of public money by his principal, though it was advanced to him contrary to this statute. U. S. v. Cutter (C. C. N. H. 1856) 2 Curt. 617, 25 Fed. Cas. No. 14,911.

A payment made to a man after he has ceased to be an employé in lieu of a leave of absence which he was entitled to, but did not, take, is unauthorized. Harrison v. U. S. (1891) 26 Ct. Cl. 259.

Strict rule under this section against advances of public money was relaxed by Act Oct. 6, 1917, c. 79, § 5 (temporary). U. S. v. Butterworth-Judson Corporation (N. Y. 1925) 45 S. Ct. 338, 267 U. S. 387, 69 L. Ed. 672.

2. Payments under contracts.—This section does not preclude a payment in any case where the money has been actually earned and the government has received an equivalent therefor. (1885) 18 Op. Atty. Gen. 105. Or where the contractor has performed, though the government may have received no benefit therefrom. McClure v. U. S. (1884) 19 Ct. Cl. 173.

This section prevents part payments upon government contracts unless the United States thereupon becomes the owner of the work paid for. (1894) 20 Op. Atty. Gen. 746.

The general rule would seem to be well recognized that, in the absence of statutory prohibition, partial payments may be made on account of work done in the construction of vessels for the navy if: (1) Title to the vessel shall have passed to the United States at the time of such payments; or (2) a lien shall have been created by law or contract upon the unfinished vessel to the amount of such partial payments. (1911) 29 Op. Atty. Gen. 46.

The Secretary of the Navy has power, in order to prevent delay in the construction of certain new cruisers, to modify the contract as regards the construction of the shafts, and may also make the per centum reserved upon each installment available to the contractor before the time originally stipulated; but payment in full for the vessels, in advance of their completion, would be a violation of this section. (1885) 18 Op. Atty. Gen. 101.

Payment of the tenth installment, but not the final payment, on a vessel under construction for the government, may properly be made to the contractor in advance of the time stipulated in the contract, where the money has been earned, but the full trial trip and formal acceptance have been delayed. (1885) 18 Op. Atty. Gen. 105.

Contract for construction of battle ship Indiana, construed, and held, that it was not competent for the Secretary of the Navy, under the existing contract, to pay to the contractors any part of the last three installments of the price of the vessel or of reservations from previous payments, prior to the preliminary or conditional acceptance of the vessel; but that a supplemental contract might be entered into, modifying the terms and provisions of the existing contract. (1894) 21 Op. Atty. Gen. 12.

"It is the plain meaning of this law that no money shall be advanced to contractors; that is, that no money shall be paid to them on account of their contracts before the actual performance of the service or the delivery of the articles stipulated for. And this not only forbids the contracting officer of the government to pay the money in advance but forbids him also to contract for such payment." (1862) 10 Op. Atty. Gen. 288.

Under Act Oct. 6, 1917, § 5 (temporary), authorizing the Secretary of War to make advance payments to contractors, and to require adequate "security," the Secretary was authorized to retain a lien on, or right over, the amount advanced, in addition to taking a collateral note and surety bond. U. S. v. Butterworth-Judson Corporation (N. Y. 1925) 45 S. Ct. 338, 267 U. S. 387, 69 L. Ed. 672, reversing (C. C. A. 1924) 297 F. 971.

3. Unauthorized acceptances.—If acceptances of drafts, drawn on the Secretary of War by army contractors before services contracted for are received or supplies furnished are delivered, are given and received as payment, they are void under this section as payments in advance of the services rendered and supplies furnished. Pierce v. U. S. (Ct. Cl. 1869) 7 Wall. 666, 682, 683, 19 L. Ed. 169.

An acceptance given by the Secretary of War to contractors, upon whose contract no payments have become due, is either an advance upon the contract, or a loan of the public credit to the contractors, both of which transactions are prohibited by law and are illegal. Peirce v. U. S. (1865) 1 Ct. Cl. 270, affirmed (1869) 7 Wall. (74 U. S.) 666, 19 L. Ed. 169.

A statement made by a public officer to the purchaser of official acceptances, before the purchase, that there is "an express law" against advancing money to the drawers, but that it has been "the custom of the department" to aid parties under like circumstances by accepting their bills, is sufficient notice of the illegal and fraudulent character of the paper, and renders the acceptances void in the hands of the claimant. Id.

See, also, (1862) 10 Op. Atty. Gen. 288.

4. **Advances to marshal of District of Columbia.**—"The President of the United States has authority to order advances of money to be made by the Secretary of the Treasury to the Marshal of the District of Columbia; and such advances may be presumed to have been made under the special direction of the President, and the sureties of the marshal are liable therefor." U. S. v. Williams (C. C. Dist. Col. 1839) 5 Cranch C. C. 619, 28 Fed. Cas. No. 16,715, affirmed (1843) 1 How. 290, 11 L. Ed. 135.

"Average estimates may be formed of the expenses incident to the courts, and instructions may be given by the President to the Secretary of the Treasury to make advances from time to time, either upon the basis of those estimates or upon statements or requisitions made by the marshals themselves, showing the necessity of advances to meet the public service." Williams v. U. S. (Dist. Col. 1843) 1 How. 290, 11 L. Ed. 135.

5. **Direction of the President.**—This section does not require the personal and ministerial performance of the prescribed duty to be exercised in every instance by the President under his own hand. Williams v. U. S. (Dist. Col. 1843) 1 How. 290, 296, 11 L. Ed. 135.

The direction of the president will be presumed, where money is advanced by the direction of the head of a proper department. U. S. v. Cutter (C. C. N. H. 1856) Fed. Cas. No. 14,911.

§ 530. Same; payment in advance for periodicals. The annual subscriptions for publications for use in the immigration service at large, and subscriptions for publications for the Department of Agriculture, to be paid for by the Secretary of Agriculture, subscriptions to newspapers, magazines, periodicals, and other publications, purchased from funds of the Quartermaster Corps, subscriptions for foreign and professional newspapers and periodicals to be paid for from the appropriation for the Engineer School, District of Columbia, subscriptions for publications for the United States Veterans' Bureau, to be paid for by the director, subscriptions for newspapers* for the naval service, and subscriptions to periodicals, which have been certified in writing by the respective heads of the executive departments or other Government establishments tc be required for official use, to be paid from appropriations available therefor, may be paid in advance. (Mar. 3, 1905, c. 1483, § 1, 33 Stat. 1182; Mar. 4, 1909, c. 301, 35 Stat. 1054; Apr. 27, 1914, c. 72, 38 Stat. 362, 369; Mar. 3, 1915, c. 83, 38 Stat. 929; Mar. 4, 1915, c. 141, § 5, 38 Stat. 1049; June 7, 1924, c. 292, § 1, 43 Stat. 533.)

* "and periodicals" should be inserted.

Historical Note

This section is a combination of provisions contained in the various acts cited in the credits to the text.

See, also, the historical note to section 530 of this title.

§ 531. Same; payments for rent of offices in foreign countries. Section 529 of this title shall not apply to advance payments for rent of offices in foreign countries by the Bureau of Foreign and Domestic Commerce. (Mar. 4, 1925, c. 556, § 1, 43 Stat. 1327.)

Historical Note

This is from the Second Deficiency Act for the fiscal year 1925, cited to the text.

§ 532. Same; by United States marshals. Appropriations for salaries, fees, and expenses of marshals shall be available for advances

to be made by United States marshals when authorized or approved by the Attorney General. (Dec. 5, 1924, c. 4, § 1, 43 Stat. 687.)

Historical Note

This is from the Second Deficiency Act for the fiscal year 1924, cited to the text.

§ 533. Same; Department of Agriculture. Advances of public money from the appropriations for the Department of Agriculture shall, except as provided in section 534 of this title, be made by the Secretary of Agriculture only to such chiefs of field parties, agricultural explorers, special agents, and others as shall have given bonds in such sums as the Secretary of Agriculture shall direct. (June 3, 1902, c. 985, 32 Stat. 303.)

Historical Note

This was a proviso in the agricultural appropriation act for the fiscal year 1903, cited to the text.

§ 534. Same; Forest Service for fighting forest fires in emergency cases. Advances of money under any appropriation for the Forest Service may be made to the Forest Service and by authority of the Secretary of Agriculture to chiefs of field parties for fighting forest fires in emergency cases, who shall give bond under such rules and regulations and in such sum as the Secretary of Agriculture may direct, and detailed accounts arising under such advances shall be rendered through and by the Department of Agriculture to the General Accounting Office. (May 23, 1908, c. 192, 35 Stat. 259; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This was a provision of the agricultural appropriation act for the fiscal year 1909, cited to the text.

Upon its incorporation into the Code, the words "Treasury Department" were changed to "General Accounting Office" to conform to section 44 of this title.

§ 535. Advances from appropriation "Boundary Line, Alaska and Canada, and the United States and Canada." Advances of money under the appropriation "Boundary line, Alaska and Canada, and the United States and Canada," may be made to the commissioner on the part of the United States and by his authority to chiefs of parties, who shall give bond under such rules and regulations and in such sum as the Secretary of State may direct, and accounts arising under advances shall be rendered through and by the commissioner on the part of the United States to the General Accounting Office as under advances made to chiefs of parties prior to March 2, 1921: *Provided,* That when the commissioner is absent from Washington and from his regular place of residence on official business he shall be allowed actual and necessary expenses of subsistence not in excess of $8 per day. (Apr. 15, 1918, c. 52, 40 Stat. 523; Mar. 2, 1921, c. 113, § 1, 41 Stat. 1210; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This is from the Diplomatic and Consular Service Appropriation Act of March 2, 1921, cited above. The same provisions were contained in the Act of 1918, cited to the text, and other prior acts.

Upon incorporation into the Code, the words "Treasury Department" were changed to "General Accounting Office" to conform to section 44 of this title.

§ 536. Advances to disbursing officers and agents under "Army accounts of advances"; amounts; use of. The Secretary of War may issue his requisitions for advances to disbursing officers and agents of the Army, under an "Army account of advances," not to exceed the total appropriation for the Army, the amount so advanced to be exclusively used to pay, upon proper vouchers, obligations lawfully payable under the respective appropriations. (June 5, 1920, c. 240, 41 Stat. 975.)

Historical Note

This section and sections 537 and 538 of this title were provisions of the Army appropriation act for the fiscal year 1921, cited to the text.

A further provision of that act, doubtless omitted as temporary, provided for the transfer of balances of existing appropriations on the books of the Treasury Department, to "Army account of advances."

§ 537. Same; charge to proper appropriations. The amount so advanced shall be charged to the proper appropriations and returned to "Army account of advances" by pay and counterwarrant. The said charge, however, to particular appropriations shall be limited to the amount appropriated to each. (June 5, 1920, c. 240, 41 Stat. 975.)

Historical Note

See historical note to section 536 of this title.

Cross-References

See, also, sections 499 and 500 of this title.

§ 538. Same; adjustment of liabilities with account. The General Accounting Office shall declare the sums due from the several special appropriations upon complete vouchers, as prior to June 5, 1920, according to law; and said office shall adjust the said liabilities with the "Army account of advances." (June 5, 1920, c. 240, 41 Stat. 975; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

See historical note to section 536 of this title as to the source of this section.

Upon incorporation into the Code, references to the Auditor for the War Department were made to refer to the General Accounting Office to conform to section 44 of this title.

§ 539. Requisitions of Secretary of Navy for advances. The Secretary of the Navy may issue his requisitions for advances to disbursing officers and agents of the Navy under a "General account of advances," not to exceed the total appropriation for the Navy, the amount so advanced to be exclusively used to pay current obligations upon proper vouchers for* "Pay of the Navy" shall be used only for its legitimate purpose, as provided by law. (June 19, 1878, c. 312, § 1, 20 Stat. 167.)

* "for" should be "and."

Historical Note

This section and sections 540 and 541 of this title were an act entitled "An act authorizing a general account of advances for naval appropriations."

Notes of Decisions

1. **Former squadrons.**—The Secretary of the Navy has authority to arrange with Baring Bros. & Co., of London, for the payment of the drafts of disbursing officers attached to foreign squadrons. (1849) 5 Op. Atty. Gen. 218.

§ 540. Same; how charged. The amount so advanced shall be charged to the proper appropriations, and returned to "General account of advances" by pay and counterwarrant; the said charge, however, to particular appropriations, shall be limited to the amount appropriated to each. (June 19, 1878, c. 312, § 2, 20 Stat. 167.)

Historical Note

See the historical note to section 539 of this title.

§ 541. Same; settlement of accounts. The General Accounting Office shall declare the sums due from the several special appropriations upon complete vouchers according to law; and shall adjust the said liabilities with the "General account of advances." (June 19, 1878, c. 312, § 3, 20 Stat. 168; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

See the historical note to section 539 of this title as to the source of this section.

Upon its incorporation into the Code, a reference to the Fourth Auditor was made to refer to the General Accounting Office to conform to section 44 of this title.

§ 542. Partial payments on vessels for Treasury Department; lien. The Secretary of the Treasury may make partial payments, from time to time, upon all contracts made after or existing May 5, 1894, for the construction of vessels for the Treasury Department, but not in excess of 75 per centum of the amount of the value of the work already done; and contracts made after said date shall provide for a lien upon such vessels for all advances so made: *Provided*, That nothing in this section shall be construed to authorize any partial payments, except on contracts stipulating for the same and then only in accordance with such contract stipulation. (May 5, 1894, No. 24, 28 Stat. 582.)

Historical Note

This was a Joint Resolution entitled "Joint resolution providing for partial payments for work, and so forth, for vessels constructed under the direction of the Secretary of the Treasury."

Notes of Decisions

See, also, notes to section 529 of this title.

1. **Lien.**—The lien of the federal government for partial payments, reserved in a contract for the construction of a revenue cutter, in accordance with this provision, which merely directs how contracts thereafter made shall provide with reference to liens upon such vessels, is one created only by the terms of the contract, and is not an express statutory lien by authority of the United States, which would be superior to any asserted rights under the lien laws of a state. U. S. v. Ansonia Brass & Copper Co. (Va. 1910) 31 S. Ct. 49, 218 U. S. 452, 54 L. Ed. 1107, modifying S. H. Hawes & Co. v. Wm. R. Trigg Co. (1909) 65 S. E. 538, 110 Va. 165.

2. **Bond for advances.**—A proposed bond of indemnity for advances made and to be made to a contractor for building a vessel deemed ineffectual. Suggested that the contractor be required to execute a refunding bond, with adequate personal or real security, or both, to cover as well advances heretofore made as any which may be made hereafter. (1894) 20 Op. Atty. Gen. 692.

§ 543. Exchange of funds restricted. No exchange of funds shall be made by any disbursing officer or agent of the Government, of any

grade or denomination whatsoever, or connected with any branch of the public service, other than an exchange for gold, silver, United States notes, and national-bank notes; and every such disbursing officer, when the means for his disbursements are furnished to him in gold, silver, United States notes, or national-bank notes, shall make his payments in the moneys so furnished; or when they are furnished to him in drafts, shall cause those drafts to be presented at their place of payment, and properly paid according to law, and shall make his payments in the money so received for the drafts furnished, unless, in either case, he can exchange the means in his hands for gold and silver at par. And it shall be the duty of the head of the proper department immediately to suspend from duty any disbursing officer or agent who violates the provisions of this section, and forthwith to report the name of the officer or agent to the President, with the fact of the violation, and all the circumstances accompanying the same, and within the knowledge of the Secretary, to the end that such officer or agent may be promptly removed from office, or restored to his trust and the performance of his duties, as the President may deem just and proper. (R. S. § 3651.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 20, 9 Stat. 64; Act Feb. 25, 1862, c. 33, § 1, 12 Stat. 345; Act July 11, 1862, c. 142, § 1, 12 Stat. 532; Act March 3, 1863, c. 73, § 3, 12 Stat. 710; Act June 3, 1864, c. 106, § 23, 13 Stat. 106.

Notes of Decisions

1. **Operation of statute.**—The provisions of this section in effect prohibit the exchange of gold and silver coin for United States notes by the Treasurer, assistant treasurers, and other depositaries of public funds. (1879) 16 Op. Atty. Gen. 381.

"The second clause * * * treats every disbursing officer not as a debtor of the United States, but as a bailor of the funds of the United States, who is required to pay them out and necessarily to keep them in the precise form in which he receives them." Id.

The third clause contemplates that under certain circumstances (as where drafts are furnished the disbursing officer) he may exchange the means in his hands for gold and silver at par; but no authority is given to make any other exchange." Id.

§ 544. Premium on sales of public moneys to be accounted for. No officer of the United States shall, either directly or indirectly, sell or dispose of to any person, for a premium, any Treasury note, draft, warrant, or other public security, not his private property, or sell or dispose of the avails or proceeds of such note, draft, warrant, or security, in his hands for disbursement, without making return of such premium, and accounting therefor by charging the same in his accounts to the credit of the United States; and any officer violating this section shall be forthwith dismissed from office. (R. S. § 3652.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 21, 9 Stat. 65.

§ 545. Expenses of fiscal agents. The officers, respectively, whose duty it is made by this chapter to receive, keep, or disburse the public moneys, as the fiscal agents of the Government, may be allowed any necessary additional expenses for fireproof chests or vaults, or other necessary expenses of collecting, safekeeping, transferring, or

disbursing the moneys; but all such expenses of every character shall be first expressly authorized by the Secretary of the Treasury, whose directions upon all the above subjects, by way of regulation and otherwise, so far as authorized by law, shall be strictly followed by all the officers. But no part of the money appropriated for the purposes above mentioned shall be expended for clerical services or payment of employees of any nature or grade. (R. S. § 3653; Aug. 7, 1882, c. 433, 22 Stat. 312; Jan. 2, 1925, c. 87, 43 Stat. 767.)

Historical Note

The first sentence of this section is from R. S. § 3653, which was derived from Act Aug. 6, 1846, c. 90, § 13, 9 Stat. 62. The second sentence is from Act Aug. 7, 1882, c. 433, cited to the text.

Upon incorporation into the Code, the word "clerks," which preceded the words "fire proof chests" in R. S. § 3653, was evidently omitted as superseded by the provision incorporated in the second sentence. The word "collecting" was evidently inserted before the word "safe-keeping" to conform to the language of the appropriation for contingent expenses under R. S. § 3653, contained in Act Jan. 2, 1925, c. 85, cited to the text.

For current appropriation for contingent expenses, etc., under the requirements of this section, see Act Jan. 26, 1927, c. 58, Title I, 44 Stat. 1031.

Cross-References

Other provisions relating to the use of appropriations for contingent expenses in payment of clerk hire in the Departments are set forth in section 46 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

1. Expense of transporting funds—Insurance.—Disbursing officers of the Government, in accepting their offices, assume the risk and trouble of exchanges and transportation of funds, and cannot charge for insurance, but only for the actual expenses of transportation. (1849) 5 Op. Atty. Gen. 104.

Antecedent authority to insure cannot charge the Department for a loss. Id.

If they insure the amount received upon a draft to cover their liability to the government, it is for their own indemnity, for if it be lost by force, theft, hazard of the elements, or any other cause, they are responsible. The transportation is never at the will of the government, but always at that of the officer. Id.

§ 546. Appropriations for construction of public buildings; disbursement. All disbursements of money appropriated for the construction of public buildings under the control of the Treasury Department shall be made by the Treasury Department at Washington, District of Columbia, except in cases of public buildings located so remote from the seat of government as to occasion hardship by undue delay in making payments to contractors. In every such exceptional case the Secretary of the Treasury may, in his discretion, require the collector of customs at or nearest the place where such building is being constructed to make the disbursement, as provided in section 70 of Title 5, but in such exceptional cases no additional compensation shall be paid to any collector of customs for disbursements made hereunder; and no compensation or commissions shall be allowed for the disbursement of any appropriation for the construction, extension, enlargement, remodeling, or repairs of any public building under the control of the Treasury Department, except to disbursing agents appointed before March 4, 1911, and who have qualified by giving bonds. (Mar. 4, 1911, c. 285, § 1, 36 Stat. 1387.)

Historical Note

This was a provision of the sundry civil appropriation act for the fiscal year 1912, cited to the text.

The following provisions were probably omitted from the Code as superseded by this section: R. S. § 255, authorizing the

Secretary of the Treasury to designate any officer who had given bond to be disbursing agent for the payment of all moneys appropriated for the construction of public buildings within the district of such officer; R. S. § 3654 (Act March 3, 1869, c. 123, 15 Stat. 312), limiting the compensation to be allowed or paid for disbursing moneys appropriated for the construction of any public building to one-eighth of one per centum; R. S. § 3657, requiring collectors of customs to act as disbursing agents for the payment of moneys appropriated for the construction of specified buildings with compensation not exceeding one-quarter of one per centum; R. S. § 3658, providing for the appointment of a disbursing agent where there was no collector at the place of location of the public work; Act March 3, 1875, c. 131, § 4, 18 Stat. 415, providing that Act March 3, 1869 (R. S. § 3654) should be deemed to limit the compensation to be allowed to any disbursing officer who disbursed moneys appropriated for the construction of any public building, to three-eighths of one per centum; Act Aug. 7, 1882, c. 433, § 1, 22 Stat. 306, providing that any disbursing agent appointed to disburse any appropriation for any building or grounds, not located within the city of Washington should be entitled to the compensation allowed to collectors of customs.

Cross-References

Commissions are not to be paid for disbursements on account of sites for public buildings by section 260 of Title 40, Public Buildings, Property and Works.

Collectors of internal revenue, are required to act as disbursing agents for expenditures of the internal revenue service by section 16 of Title 26, Internal Revenue.

The Postmaster General is authorized to designate postmasters as disbursing officers for certain payments by section 50 of Title 39, The Postal Service.

Notes of Decisions

1. Decisions under former statutes.—As to conflict between R. S. §§ 255, 3657, 3658, Act March 3, 1875, § 4, and Act Aug. 7, 1882, § 1 (all superseded), see (1905) 25 Op. Atty. Gen. 536.

As to authority of surveyor of customs to act as disbursing agent and receive extra compensation see, (1907) 26 Op. Atty. Gen. 108.

As to appointment of a person not holding any office under the United States requiring him to give bond to disburse funds appropriated to build custom house and post office building, see (1881) 17 Op. Atty. Gen. 124.

In the absence of any special designation by the Secretary of the Treasury, the collector of customs of the district in which a public building is being erected should act as disbursing agent. It was held competent for the Secretary to designate the collector or any other bonded officer to act as disbursing agent in any such case. When such building was at a place in which there was no collector, the Secretary might, in his discretion, designate a private citizen to act. (1889) 19 Op. Atty. Gen. 393.

As to appointment of a disbursing agent for the funds appropriated for a post office at Washington, see Bartlett v. U. S. (Ct. Cl. 1905) 25 S. Ct. 433, 434, 197 U. S. 230, 49 L. Ed. 735, affirming (1904) 39 Ct. Cl. 338.

The doctrine announced by the Supreme Court of the United States in the case of Bartlett v. United States should not be extended beyond the particular facts in that case. (1905) 25 Op. Atty. Gen. 536.

The Secretary of the Treasury held not authorized to appoint a disbursing agent for a public building in Washington. Bartlett v. U. S. (1904) 39 Ct. Cl. 338, affirmed (1905) 25 S. Ct. 433, 197 U. S. 230, 49 L. Ed. 735.

The right of a disbursing clerk of the Treasury Department to compensation for services performed by him under the direction of the Secretary of the Treasury, as disbursing agent of the funds appropriated for a post office at Washington, depends solely upon the congressional legislation on that subject. Bartlett v. U. S. (Ct. Cl. 1905) 25 S. Ct. 433, 434, 197 U. S. 230, 49 L. Ed. 735, affirming (1904) 39 Ct. Cl. 338.

Bond and oath of office by disbursing agent, see Bartlett v. U. S. (1904) 39 Ct. Cl. 338, affirmed (1905) 25 S. Ct. 433, 197 U. S. 230, 49 L. Ed. 735.

A disbursing officer holding an office created by statute having an annual salary, but no prescribed specific duties, is bound to disburse such money and in such manner as the Secretary may direct. Bartlett v. U. S. (1890) 25 Ct. Cl. 389.

The Secretary of the Treasury cannot designate an officer in the city of Washington to be a disbursing agent in another place nor where there is a collector of customs. Id.

As to fees of collectors as disbursing agents, under Acts Aug. 23, 1842 (section 70 of Title 5, Executive Departments and Government Officers and Employees) and June 12, 1858 (superseded), see U. S. v. Austin (C. C. Mass. 1864) Fed. Cas. No. 14,480.

2. —— R. S. § 255.—Where the building was not within the district of the officer, appointment was not authorized. Bartlett v. U. S. (1904) 39 Ct. Cl. 338, affirmed (1905) 25 S. Ct. 433, 197 U. S. 230, 49 L. Ed. 735.

3. —— R. S. § 3564.—R. S. § 3654 (superseded) did not by implication repeal section 185 of Title 10, Army. (1889) 19 Op. Atty. Gen. 425.

R. S. § 3654 (superseded) did not assume to fix the compensation to be allowed to disbursing agents, but only to indicate the limits beyond which compensation should not go. Id.

R. S. § 3654 (superseded) did not authorize the payment of extra compensation to an officer of the engineer department for disbursement of public moneys while superintending public works. Compensation for such services is forbidden by section 185 of Title 10, Army. Id.

4. —— R. S. § 3657.—Surveyors of customs at ports where there were no collectors were not to be considered as collectors, and therefore within the provisions of R. S. § 3657 (superseded). (1907) 26 Op. Atty. Gen. 108.

5. —— R. S. § 3658.—The words "place of location of any public work" meant some place, city, or town within a collection district, and not the whole district. (1905) 25 Op. Atty. Gen. 536.

The Secretary of the Treasury was given authority to appoint agents for the disbursement of moneys appropriated for the construction of public buildings where there was no collector of customs at the place of the location of such buildings. Id.

A claim of a lieutenant-colonel of the Corps of Engineers for compensation for disbursements was not controlled by Act March 3, 1875, § 4 (superseded). (1889) 19 Op. Atty. Gen. 425.

6. —— Act March 3, 1875, § 4.—Where an agent was appointed for the disbursement of money appropriated for the erection of a public building with the maximum compensation allowed by law, at that time being one-eighth of 1 per centum, and afterwards the act of March 3, 1875 (superseded) increased the compensation for similar services the Secretary of the Treasury had a discretion as to whether or not he would allow him the full maximum compensation under the later statute. (1881) 17 Op. Atty. Gen. 219.

7. —— Act Aug. 7, 1882, § 1.—Act Aug. 7, 1882 (superseded) was not so far retroactive as to fix the compensation of former disbursing officers in all the past transactions of the government. Meriwether v. U. S. (1887) 22 Ct. Cl. 332.

Act Aug. 7, 1882 (superseded) did not extend to one of the disbursing clerks in the office of the Secretary of the Treasury. Bartlett v. U. S. (1890) 25 Ct. Cl. 389.

§ 547. Disposition of trust funds received from foreign governments for citizens of United States. All moneys received by the Secretary of State from foreign governments and other sources, in trust for citizens of the United States or others, shall be deposited and covered into the Treasury.

The Secretary of State shall determine the amounts due claimants, respectively, from each of such trust funds, and certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due.

Each of the trust funds covered into the Treasury as aforesaid is hereby appropriated for the payment to the ascertained beneficiaries thereof of the certificates herein provided for. (Feb. 27, 1896, c. 34, 29 Stat. 32.)

Editorial comment.—It has been suggested that R. S. § 3659, apparently omitted from the Code as superseded, is still in force with the exception of the last eight words. See the historical note.

Historical Note

This was a provision of the diplomatic and consular service appropriation act for the fiscal year 1897, cited to the text.

R. S. § 3659 was probably omitted from the Code as superseded by this section. It read as follows: "All funds held in trust by the United States, and the annual interest accruing thereon, when not otherwise required by treaty, shall be invested in stocks of the United States, bearing a rate of interest not less than five per centum per annum."

Notes of Decisions

1. **Investment of trust funds.**—The investment of trust funds (money derived from the sale of school farm lands) made by the Secretary of the Treasury in 5 per cent. bonds of the United States, which have since been called for payment, may be continued in the same bonds at 3½ per cent., in accordance with the cir-

cular of the Treasury Department of May 12, 1881, or he is at liberty to pay off such bonds and invest the proceeds in any other bonds of the United States for the benefit of the trusts mentioned in the provisions aforesaid. (1881) 17 Op. Atty. Gen. 217.

2. Right of beneficiaries to interest.—Upon the settlement by arbitration of the claims of citizens of the United States against the government of Spain, under the agreement concluded between the United States and Spain on the 12th of February, 1871, the commission adjudged the right of a claimant to receive damages to the amount of $748,180 with interest at six per cent. per annum. The full amount was paid to the Secretary of State, and the whole amount paid to the claimant by the secretary, except five per cent. of the amount received. The amount retained was invested in securities of the United States, and the interest was similarly invested, and so were subsequent accumulations of interest. The Secretary of State assigned as the reason for holding back the amount, that "five per centum of the amount due in each case will be reserved for the present, to meet the expenses of the commission, until a payment to cover such expenses shall have been made by Spain in conformity with the provision in that regard of said agreement." The court held that the claimant was entitled only to the principal sum retained and not to any interest or income which had been earned by its investment. Under the agreement for arbitration, the claim was to be laid before the arbitrators and umpire "on the part of the government of the United States," and so far as the claimant's interest was concerned it constituted a claim against the United States. The United States are not liable to pay interest on claims against them, in the absence of express statutory provision to that effect. U. S. v. Bayard (Dist. Col. 1888) 127 U. S. 251, 8 S. Ct. 1156, 32 L. Ed. 159.

3. Jurisdiction of suits.—The duty of the Secretary of the Treasury in paying certificates of the Secretary of State is ministerial; and, where the claimant named in a certificate holds as trustee ex maleficio for another whose equity the Secretary of State has remitted to the courts, the Supreme Court of the District of Columbia has jurisdiction of a suit brought by such beneficial owner against the other in which the Secretary of the Treasury and the Treasurer of the United States may be impleaded, required to pay over the money to a receiver, and enjoined from making other disposition of it. Mellon v. Orinoco Iron Co. (Dist. Col. 1924) 266 U. S. 121, 45 S. Ct. 53, 69 L. Ed. 199, affirming (1924) 296 F. 965, 54 App. D. C. 218, wherein the court said: "It is contended, on behalf of the Secretary of Treasury, that his duty in this regard is entirely ministerial, that he must carry out the behest of the Secretary of State, who is charged by law with determining who the proper claimants are, and therefore that, after the decision of the Secretary of State, no court may interfere between the payment by the Secretary of the Treasury to the claimant found to be entitled. We consider this question to be already settled by the decision of this court against the Government's contention. In Houston v. Ormes (Dist. Col. 1920) 252 U. S. 469, 40 S. Ct. 369, 64 L. Ed. 667, Congress had appropriated $1,200 to pay a claim found by the Court of Claims to be due to one Susan Sanders. This was a suit, brought by one who claimed an equitable lien for attorney's fees upon the amount thus appropriated, to enjoin the Secretary of the Treasury and the Treasurer of the United States from paying the amount due on that lien to the person named in the appropriation, and to require them to pay the sum claimed to a receiver in the suit pending the hearing and to accept the receipt of the receiver as in full acquittance of the government from the parties to the suit for the amount paid him. The court in that case said (p. 473): 'In the present case it is conceded, and properly conceded, that payment of the fund in question to the defendant Sanders is a ministerial duty, the performance of which could be compelled by a mandamus. But from this it is a necessary consequence that one who has an equitable right in the funds as against Sanders may have relief against the officials of the Treasury through a mandatory writ of injunction, or a receivership which is its equivalent, making Sanders a party so as to bind her and so that the decree may afford a proper acquittance to the government. The practice of bringing suits in equity for this purpose is well established in the courts of the District (Sanborn v. Maxwell [1901] 18 App. D. C. 245; Roberts v. Consaul (1905) 24 App. D. C. 551, 562; Jones v. Rutherford (1905) 26 App. D. C. 114; Parish v. McGowan (1912) 39 App. D. C. 184; s. c. on appeal, McGowan v. Parish (Dist. Col. 1915) 237 U. S. 285, 295, 35 S. Ct. 543, 59 L. Ed. 955). Confined, as it necessarily must be, to cases where the officials of the Government have only a ministerial duty to perform, and one in which the party complainant has a particular interest, the practice is a convenient one, well supported by both principle and precedent.'

"It seems to us that the present case cannot be distinguished from the one cited. It is conceded by the Government that the duty of the Secretary of the Treasury is ministerial and is to pay the amount ordered distributed by the

Secretary of State to the persons named in his certificate. Certainly the action of the Secretary of the Treasury, in obedience to an appropriation by Congress, is neither more nor less of a ministerial duty than the obligation of Secretary of the Treasury in the case at bar to act in compliance with the direction of the Secretary of State."

§ 548. **Examination of depositaries.** The Secretary of the Treasury is authorized to cause examinations to be made of the books, accounts, and money on hand, of the several depositaries; and for that purpose to appoint special agents, as occasion may require, with such compensation, not exceeding $6 per day and traveling expenses, as he may think reasonable, to be fixed and declared at the time of each appointment. The agent selected to make these examinations shall be instructed to examine as well the books, accounts, and returns of the officer, as the money on hand, and the manner of its being kept, to the end that uniformity and accuracy in the accounts, as well as safety to the public moneys, may be secured thereby. (R. S. § 3649.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 6, 1846, c. 90, § 11, 9 Stat. 62.

An appropriation for the actual expenses of examiners detailed to examine the books, accounts, and money on hand at the several depositories, including national banks acting as depositories under the requirements of this section, was made by Act Jan. 26, 1927, c. 58, Title I, 44 Stat. 1031. Similar appropriations were made by prior acts.

Cross-References

General limitations on subsistence allowances, or money in lieu thereof, as to officers and employés of the United States, are contained in sections 74 and 75 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

1. Accounts of sales of public lands.—The expenses incurred in the examination of the books of receivers of public money, arising from the sale of public lands by treasury agents, under the sub-treasury law (incorporated in part in this section) are chargeable to the appropriations for special agents to examine books, accounts, and money on hand in the several depositaries under that law. (1851) 5 Op. Atty. Gen. 377.

§ 549. **Examination of accounts of custodians of public moneys.** In addition to the examinations provided for in section 548 of this title it shall be the duty of each comptroller of customs, as a check upon the collector of the customs, of their respective districts; and of the superintendent of each mint and branch mint, as a check upon the treasurers, respectively, of the mints, or the persons acting as such, at the close of each quarter of the year, and as much oftener as they are directed by the Secretary of the Treasury to do so, to examine the books, accounts, returns, and money on hand, of said depositaries,* collectors, treasurers of the mint and each branch mint, and persons acting as such, and to make a full, accurate, and faithful return of their condition to the Secretary of the Treasury. (R. S. § 3650; Oct. 28, 1921, c. 114, § 1, 42 Stat. 208; Sept. 21, 1922, c. 356, Title IV, § 523, 42 Stat. 974.)

* The words "of said depositaries," which were substituted for "of the assistant treasurers" should either be omitted, or some reference to depositaries inserted in the fourth line preceding the words "the collector of the customs" where a reference to the assistant treasurers has been omitted.

Editorial comment.—It is not clear why the words "and surveyor" were omitted after the words "comptroller of customs."

Historical Note

This is from R. S. § 3650, which was derived from Act Aug. 6, 1846, c. 90, § 12, 9 Stat. 62.

Upon incorporation into the Code, the words "naval officer" were changed to "comptroller of customs" to conform to section 38 of Title 19, Customs Duties.

A reference to the assistant treasurers was evidently omitted because of the repeal of laws authorizing assistant treasurers by Act May 29, 1920, c. 214, § 1, 41 Stat. 655.

Provisions concerning the register and receiver of each land office were evidently omitted as inoperative since the consolidation of those offices under Act Oct. 28, 1921, c. 114, § 1, cited to the text, and Act March 3, 1925, c. 462, 43 Stat. 1145.

A reference to the "director" of each mint and branch mint, was apparently omitted as obsolete.

§ 550. Same; Coast and Geodetic Survey. Advances of money from available appropriations may be made to the Coast and Geodetic Survey and by authority of the superintendent thereof to chiefs of parties, who shall give bond under such rules and regulations and in such sum as the Secretary of Commerce may direct, and accounts arising under such advances shall be rendered through and by the disbursing officer of the Coast and Geodetic Survey to the General Accounting Office as under advances made to chiefs of parties prior to July 1, 1918. (July 1, 1918, c. 113, § 1, 40 Stat. 688; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This section was a provision of the sundry civil appropriation act of July 1, 1918, cited to the text.

Upon incorporation into the Code, the words "General Accounting Office" were substituted for "Treasury Department" to conform to section 44 of this title.

CHAPTER 11.—APPROPRIATIONS

Sec.
581. Contents of estimates of appropriations and statements of expenditures and estimated expenditures; statements accompanying lump-sum appropriations.
582. Statements required with estimates for lump-sum appropriations.
583. Enumeration of estimates required.
(1) Expenses of national loan.
(2) Payment of judgments.
(3) Customs service.
(4) Parting and refining bullion.
(5) Laundering paper money.
(6) Public Health Service.
(7) Federal Farm Loan Board and Federal Farm Loan Bureau.
(8) River and harbor improvements.
(9) Trusses for soldiers.
(10) Fortifications and other works of defense.
(11) Extension of cable or telegraph lines in Alaska.
(12) Navy pension fund.
(13) Free delivery service.
(14) Personal services in Bureau of Mines.
(15) Clerk hire in office of disbursing clerk for payment of pensions.
(16) Department of Commerce.
(17) Steamboat Inspection Service.
(18) Alaskan fish hatcheries.
Sec.
583. Enumeration of estimates required (Cont'd).
(19) Shipping commissioners and clerks.
(20) Census Office.
(21) Federal Trade Commission.
(22) Expenses of Department of Labor.
(23) Bureau of Immigration and Naturalization; division of information.
(24) Expenses of collecting internal revenue.
(25) United States Penitentiary, McNeils Island, Wash.
(26) Personal services in Indian Office.
584. Expenses of Liberty loans.
585. Manner of communicating estimates.
586. Order and arrangement of estimates and general appropriation bills.
587. Estimates not conforming to requirements rearranged.
588. Estimates for printing and binding; only appropriations made for printing and binding used therefor.
589. Same; other officers.
590. Same; Geological Survey, Coast and Geodetic Survey, Hydrographic Office, and Signal Service.
591. Estimates; for salaries.

Sec.
592. Reports in estimates of number and salaries of inefficient employees.
593. Statements in estimates of condition of business in departments.
594. Requisites of estimates for appropriations for public works.
595. Statements in estimates of buildings rented.
596. Estimates; statements in of Government-owned buildings in District of Columbia.
597. Same; additional explanations.
598. Same; amount of outstanding appropriations designated.
599. Same; statement of persons employed at mints and assay offices.
600. Same; for Coast Guard.
601. Same; reports of persons employed on public buildings and expenditures for repairs.
602. Same; appropriations to refund illegally assessed or collected revenue taxes.
603. Same; for Foreign Service.
604. Same; for river and harbor improvements.
605. Same; for construction or modernization of batteries.
606. Same; for fortifications for insular possessions.
609. Same; statements in of number and salaries of persons employed under appropriations for increase of Navy.
610. Same; for Post Office Department.
611. Same; for Railway Mail Service.
612. Same; Geological Survey.
613. Same; for Indian appropriations.
614. Same; for national parks.
615. Same; for expenses of insular and territorial affairs within jurisdiction of Department of Justice.
616. Same; for expenses of government in Territories.
617. Same; estimates for Department of Agriculture.
618. Same; for Lighthouse Establishment.
619. Same; for officers and employees for Bureau of Fisheries.
620. Same; for expenses of regulating immigration.
621. Same; for Panama Canal.
622. Same; compiling and printing.
623. Same; elimination of unnecessary words.
624. Same; statements accompanying.
625. Statement of proceeds of sales of old material.
626. Statements of money received from proceeds of public property or other sources, and of payments therefrom.
627. Construction of appropriation Acts.
628. Application of moneys appropriated.
629. Lump-sum appropriations; not available for increased salaries.
630. Same; salaries of scientific and technical employees of Department of Agriculture.

Sec.
631. Drafts for War and Navy Departments.
632. Restriction on payments on account of Postal Service.
633. Charge against fund "Transportation and recruiting," for transportation of men discharged.
634. Appropriations for Navy controlled by Secretary; for bureaus kept separately.
635. Appropriations for Bureau of Yards and Docks available until expended.
636. Restrictions upon use of appropriations for "Increase of Navy" under Bureau of Ordnance.
637. Contingent expenses not payable from appropriations for Naval Establishment.
638. Restrictions upon appropriations for ordnance or ordnance material or material purchased therewith.
639. Credit to appropriation "Pay miscellaneous" of premiums from sale of exchange.
640. Clothing and small-stores fund.
641. Naval supplies; purchase, and classification and issue, for Navy, and not for bureaus.
642. "Naval Supply Account"; purchases charged to; payments from "General Account of Advances," returned.
643. Permanent special working fund; charges against and credits to.
644. Naval Supply Account fund; charges against.
645. Prices of material expended from Naval Supply Account; issue of certain material at reduced prices.
646. Overhead charges charged against appropriations.
647. Direct and indirect charges included in cost of work under naval appropriations.
648. Equipment outfits charged against appropriation "Increase of the Navy, construction and machinery."
649. Expenses of certain naval auxiliaries charged against appropriation "Fuel and transportation."
650. Charge against fund "Pay of the Army" of detained pay.
651. Disbursements; for Signal Service.
652. Appropriations for Quartermaster Corps; no payment of extra-duty pay at West Point.
653. Appropriations for horses; expenditures from.
654. Appropriations for support of Army; use for supplies for subsequent years.
655. Appropriations for ordnance-stores ammunition, available for two years.
656. Cost of transportation of material charged to appropriations for work in connection with which transportation charges required.

Sec.
657. Appropriations for Ordnance Department; no expenditure for freight charges.
658. Expenses of manufacturing operations by Chief of Ordnance charged against appropriations therefor.
659. Use of material procured under any appropriation by Chief of Ordnance.
660. Expenses of Ordnance Department in procuring stores for other departments or bureaus.
661. Appropriation for Coast and Geodetic Survey; purchases from.
662. Appropriations for Bureau of Fisheries; purchases from.
663. Expenditures for supplies for courts and judicial officers.
664. Appropriation for furniture, and repairs for public buildings; certain expenditures prohibited.
665. Expenditures in excess of appropriations; voluntary service forbidden; apportionment of appropriations for contingent expenses or other general purposes.
666. Gratuitous services of members of Officers' Reserve Corps.
667. Contracts for fuel for public buildings in advance of appropriations.
668. Contracts for fuel by Secretary of War without regard to current fiscal year.
669. Apportionment of contingent fund of departments to offices and bureaus.
670. Footing of paragraphs to determine amount appropriated.
671. Appropriations for contingent expenses of Congress; restrictions.
672. Expenses of commissions and inquiries.
673. Use of public moneys or appropriations for compensation or expenses of commission; details from executive departments to such commission prohibited.
674. Restrictions on contingent appropriations.
675. Purchases from contingent funds.
676. Purchases by Department of Commerce.
677. Expenditure of appropriations for contingent expenses of Post Office Department.
678. Purchases of books from appropriations for contingent expenses.
679. Expenditure from appropriations for private telephone service.
680. Same; when allowed.
681. Buildings under control of Treasury Department.
682. Appropriations for public buildings available until completion of work.
683. Appropriations for public buildings available only for purposes specifically enumerated; separate estimates for administrative work; appointments.
684. Pay of assistant custodians and janitors.
685. Lighthouses.
686. Purchase or manufacture of stores or materials or performance of services by bureau or department for another bureau or department.
687. Appropriations for Court of Customs Appeals; detailed statement of expenditure.
688. System of bookkeeping in Bureau of Indian Affairs; allotment of appropriations; classified statement to accompany estimates.

PERMANENT ANNUAL APPROPRIATIONS

711. Permanent indefinite appropriations.

TREASURY DEPARTMENT

(1) Consular receipts.
(2) Interest on public debt.
(3) Refunding moneys erroneously received and covered.
(4) Redemption of stamps (internal revenue).
(5) Debentures and other charges (customs).
(6) Debentures and drawbacks (customs).
(7) Repayment of excess of deposits for unascertained duties (customs).
(8) Refunding duties on goods destroyed (customs).
(9) Public Health Service.
(10) Refunding proceeds of goods seized and sold.
(11) Refunding proceeds of unclaimed merchandise (customs).

WAR DEPARTMENT

(12) Soldiers' Home.
(13) Horses and other property lost in military service.

NAVY DEPARTMENT

(14) Indemnity for lost clothing.
(15) Prize money.

INTERIOR DEPARTMENT

(16) Deposits for surveying public lands.
(17) Five per centum fund to States.
(18) Indemnity for swamp lands for States.
(19) Refunding money for lands erroneously sold.
(20) Payment of interest to North Carolina Cherokees.

MISCELLANEOUS

(21) Smithsonian Institution.

712. Balances of appropriations; expenditure.
713. Same; carried to surplus fund.
714. Same; reports to Congress as to claims.

Sec.
715. Same; certification as to pending claims.
716. Same; for pay of Navy or Marine Corps.
717. Same; reappropriation to other purpose construed as new appropriation.
718. Appropriations in annual appropriation Acts not permanent.
719. Unexpended balances for National Home for Disabled Volunteer Soldiers.
720. Proceeds of sales of material.
721. Payments of appropriations for charitable purposes.
722. Term of service of Members of Congress as trustees or directors of corporations or institutions appropriated for.

Editorial comment.—It would seem that the following provision, which followed an appropriation for the Army and Navy Hospital in Act Aug. 4, 1886, c. 902, 24 Stat. 246, should have been included in the Code:

"The estimates for the service shall hereafter be submitted as a part of the military establishment."

Historical Note

R. S. § 3677, provided that the Commissioner of Agriculture should direct and superintend the expenditure of all money appropriated to the Department and render accounts thereof. It was superseded by the organization of that department as an executive department, under the supervision and control of the Secretary of Agriculture, by Act Feb. 9, 1889, c. 122, 25 Stat. 659.

Act March 3, 1879, c. 182, § 1, 20 Stat. 386, authorizing the expenditure, from the appropriation for collecting the revenue from customs, of not exceeding $100,000 for the detection and prevention of frauds upon the customs revenue, and Act April 27, 1904, c. 1630, § 1, 33 Stat. 396, increasing the sum which might be expended to $150,000, were probably omitted from the Code as superseded by subsequent appropriation acts. See Act March 3, 1915, c. 75, § 1, 38 Stat. 836, increasing the amount to be expended for the fiscal year 1916 to $200,000 and subsequent acts down to Act Jan. 3, 1923, c. 22, 42 Stat. 1094, authorizing the use of that or a larger sum for the detection and prevention of frauds. The most recent appropriation acts have not specified the sum which may be used for such purpose. See Act Jan. 26, 1927, c. 58, Title I, 44 Stat. 1032.

Section 581. Contents of estimates of appropriations and statements of expenditures and estimated expenditures; statements accompanying lump-sum appropriations. (a) Except as otherwise provided in chapter 1 of this title, the contents, order, and arrangement of the estimates of appropriations and the statements of expenditures and estimated expenditures contained in the Budget or transmitted under section 13* of this title, and the notes and other data submitted therewith, shall conform to the requirements of this chapter and any other applicable laws.

(b) Estimates for lump-sum appropriations contained in the Budget or transmitted under section 14 of this title shall be accompanied by statements showing, in such detail and form as may be necessary to inform Congress, the manner of expenditure of such appropriations and of the corresponding appropriations for the fiscal year in progress and the last completed fiscal year. Such statements shall be in lieu of statements of like character otherwise required by law. (June 10, 1921, c. 18, § 204, 42 Stat. 21.)

* "13" should be "14."

Historical Note

This section was part of the Budget and Accounting Act of 1921. See chapter 1 of this title.

R. S. § 3666, omitted from the Code; read as follows: "The estimates for expenditures required by the Department of the Navy for the following purposes shall be given in detail, and the expenditures made under appropriations therefor shall be accounted for so as to show the disbursements of each Bureau under each respective appropriation:

First. Freight and transportation.
Second. Printing and stationery.
Third. Advertising in newspapers.

Fourth. Books, maps, models, and drawings.

Fifth. Purchase and repair of fire-engines and machinery.

Sixth. Repairs of and attending to steam-engines in navy-yards.

Seventh. Purchase and maintenance of horses and oxen, and driving teams.

Eighth. Carts, timber-wheels, and the purchase and repair of workmen's tools.

Ninth. Postage of public letters.

Tenth. Fuel, oil, and candles for navy-yards and shore-stations.

Eleventh. Pay of watchmen and incidental labor not chargeable to any other appropriation.

Twelfth. Transportation to, and labor attending the delivery of provisions and stores on foreign stations.

Thirteenth. Wharfage, dockage, and rent.

Fourteenth. Traveling expenses of officers and others under orders.

Fifteenth. Funeral expenses.

Sixteenth. Store and office rent, fuel, commissions, and pay of clerks to navy-agents and store-keepers.

Seventeenth. Flags, awnings, and packing-boxes.

Eighteenth. Premiums and other expenses of recruiting.

Nineteenth. Apprehending deserters.

Twentieth. Per-diem pay to persons attending courts-martial, courts of inquiry, and other services authorized by law.

Twenty-first. Pilotage and towage of vessels, and assistance to vessels in distress.

Twenty-second. Bills of health and quarantine expenses of vessels of the United States Navy in foreign ports."

Act March 3, 1909, c. 255, 35 Stat. 754, also omitted from the Code, read as follows: "The estimates for the support of the Navy shall hereafter show, under the head of Pay of the Navy, the sums allowed for pay of officers belonging to the line, to the several departments of the staff, and to the retired list; the estimates to show under each head the amount allowed for pay proper, for increases due to longevity and foreign service, and for pay at sea rates to officers employed on shore; together with the total number of warrant and petty officers and seamen of the several grades and designations, including as to each class the amount allowed for pay proper and for longevity or service increases. The estimates shall include a list giving the rates of pay for all petty officers and other enlisted men of the Navy."

The same provision was contained in Act May 13, 1908, c. 166, 35 Stat. 129.

These provisions superseded the former provisions for the form and contents of estimates for pay of the Navy, of Act Feb. 23, 1881, c. 73, § 1, 21 Stat. 331.

§ 582. Statements required with estimates for lump-sum appropriations. There shall be submitted in the annual Budget following every estimate for a general or lump-sum appropriation, except public buildings or other public works constructed under contract, a statement showing in parallel columns:

First, the number of persons, if any, intended to be employed and the rates of compensation to each, and the amounts contemplated to be expended for each of any other objects or classes of expenditures specified or contemplated in the estimate, including a statement of estimated unit cost of any construction work proposed to be done; and

Second, the number of persons, if any, employed and the rate of compensation paid each, and the amounts expended for each other object or class of expenditure, and the actual unit cost of any construction work done, out of the appropriation corresponding to the estimate so submitted, during the completed fiscal year next preceding the period for which the estimate is submitted.

Other notes shall not be submitted following any estimate embraced in the annual Budget other than such as shall suggest changes in form or order of arrangement of estimates and appropriations and reasons for such changes. (Aug. 24, 1912, c. 355, § 6, 37 Stat. 487; Aug. 1, 1914, c. 223, § 10, 38 Stat. 680; June 10, 1921, c. 18, § 204, 42 Stat. 21.)

Editorial comment.—That part of the paragraph numbered "First," which relates to rates of compensation, may be modified to some extent by section 674 of Title 5, Executive Departments and Government Officers and Employees.

Historical Note

This is Act Aug. 24, 1912, c. 355, § 6, cited to the text, as amended by Act Aug. 1, 1914, c. 223, § 10, also cited to the text.

The section, as originally enacted, read as follows:

"Hereafter there shall be submitted, in the annual Book of Estimates, following every estimate for a general or lump sum appropriation which exceeds $250,000 in amount, a statement showing in parallel columns:

"First, the number of persons, if any, intended to be employed and the rates of compensation to each, and the amounts contemplated to be expended for each of any other objects or classes of expenditures specified or contemplated in the estimate; and

"Second, the number of persons, if any, employed and the rates of compensation paid each, and the amounts expended for each other object or class of expenditures out of the appropriation corresponding to the estimate so submitted, during the completed fiscal year next preceding the period for which the estimate is submitted."

Upon incorporation into the Code, the words "Book of Estimates" in two places, were changed to "Budget" to conform to section 204 of the Act of June 10, 1921, cited to the text.

Act July 1, 1916, c. 209, § 4, 39 Stat. 336, providing how the information required by this section should be submitted, was probably omitted from the Code as superseded by the second paragraph of section 581 of this title.

§ 583. Enumeration of estimates required. There shall be submitted annually in addition to any other estimates required by law to be submitted:

(1) **Expenses of national loan.** Detailed estimates of appropriations required for expenses of the national loan. (June 20, 1874, c. 328, § 4, 18 Stat. 109.)

(2) **Payment of judgments.** Estimates for the payment of all judgments against the United States, including judgments in Indian depredation claims and of United States courts. (Apr. 27, 1904, c. 1630, § 1, 33 Stat. 422.)

(3) **Customs Service.** A statement specifying in detail the number and class of officers and employees of every grade and nature, with the rate of compensation to each, that may be necessary to properly conduct the business of collecting the revenue at each port of entry in the United States, together with an estimate of the amounts required for contingent expenses at each of said ports, and for such additional expenses of the service as can not be otherwise specifically provided for. (Aug. 5, 1882, c. 389, § 5, 22 Stat. 256.)

(4) **Parting and refining bullion.** Detailed estimates for the expenses of parting and refining bullion. (Mar. 4, 1911, c. 240, 36 Stat. 1292.)

(5) **Laundering paper money.** Estimates in detail of the expense of laundering paper money. (Aug. 26, 1912, c. 408, § 1, 37 Stat. 595.)

(6) **Public Health Service.** Detailed estimates of the expenses of maintaining the Public Health Service. (Mar. 3, 1905, c. 1484, § 1, 33 Stat. 1217; Aug. 14, 1912, c. 288, § 1, 37 Stat. 309.)

(7) **Federal Farm Loan Board and Federal Farm Loan Bureau.** Detailed estimates for appropriations for the Federal Farm Loan Board and the Federal Farm Loan Bureau. (Mar. 3, 1917, c. 163, § 1, 39 Stat. 1084; Sept. 8, 1916, c. 464, § 1, 39 Stat. 803.)

(8) **River and harbor improvements.** Estimates in detail for river and harbor improvements required for the ensuing fiscal year. (June 4, 1897, c. 2, § 1, 30 Stat. 48.)

(9) **Trusses for soldiers.** Estimates of sufficient sums for the

purchase of trusses for soldiers under section 249 of Title 38. (May 27, 1908, c. 200, § 1, 35 Stat. 367.)

(10) **Fortifications and other works of defense.** Estimates of appropriations for fortifications and other works of defense, for the armament thereof, and for the procurement of heavy ordnance for trial and service upon an annual basis. (Mar. 3, 1919, c. 99, § 6, 40 Stat. 1309.)

(11) **Extension of cable or telegraph lines in Alaska.** Detailed estimates for any further extension of the cable or telegraph lines in the district of Alaska. (Mar. 2, 1907, c. 2511, 34 Stat. 1159.)

(12) **Navy pension fund.** Estimates of the claims and demands chargeable upon and payable out of the naval pension fund. (R. S. § 3667.)

(13) **Free delivery service.** Estimates in detail as far as practicable for expenses of the free delivery service. (Mar. 3, 1897, c. 385, 29 Stat. 648.)

(14) **Personal services in Bureau of Mines.** Estimates submitted specifically for all personal services required permanently and entirely in the Bureau of Mines at Washington, District of Columbia, and paid prior to March 3, 1915, from lump-sum or general appropriations. (Mar. 3, 1915, c. 75, § 1, 38 Stat. 858.)

(15) **Clerk hire in office of disbursing clerk for payment of pensions.** Estimates in detail for clerks and others employed in the office of the disbursing clerk for the payment of pensions and the amounts to be paid to each. (Aug. 17, 1912, c. 301, § 1, 37 Stat. 312.)

(16) **Department of Commerce.** Estimates in detail for all personal services and for all general and miscellaneous expenses for the Department of Commerce. (Mar. 3, 1903, c. 1006, § 8, 32 Stat. 1082; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736.)

(17) **Steamboat Inspection Service.** Detailed estimates for salaries and contingent expenses of the Steamboat Inspection Service. (June 25, 1910, c. 384, § 18,* 36 Stat. 773.)

(18) **Alaskan fish hatcheries.** Estimates to cover the cost of the establishment and maintenance of fish hatcheries in Alaska, the salaries and actual traveling expenses of officials necessary to the proper investigation, inspection, and regulation of the Alaskan fisheries and hatcheries, and such other expenditures as may be necessary to carry out the provisions of sections 230 to 242 of Title 48. (June 26, 1906, c. 3547, § 12, 34 Stat. 480.)

(19) **Shipping commissioners and clerks.** Detailed estimates for compensation of shipping commissioners and clerks of shipping commissioners, for services under section 331 of Title 46, estimates therefor to be submitted to the Bureau of the Budget by the Secretary of Commerce. (June 25, 1910, c. 384, § 7, 36 Stat. 773.)

(20) **Census Office.** Estimates in detail for the expenses of the permanent Census Office. (June 28, 1902, c. 1301, § 1, 32 Stat. 456.)

(21) **Federal Trade Commission.** Estimates in detail for all expenditures under the Federal Trade Commission. (Mar. 3, 1915, c. 75, § 1, 38 Stat. 841.)

(22) **Expenses of Department of Labor.** Estimates in detail for all personal services and for all general and miscellaneous expenses for the Department of Labor. (May 1, 1913, c. 1, § 1, 38 Stat. 2.)

(23) **Bureau of Immigration and Naturalization;† division of information.** Detailed estimates for appropriations required for additional assistants, clerical and otherwise, necessary to maintain a division of information in the Bureau of Immigration and Naturalization,† Department of Labor. (Mar. 4, 1907, c. 2918, § 1, 34 Stat. 1329.)

(24) **Expenses of collecting internal revenue.** An estimate in detail, by collection districts, of the expense of assessing and the expense of the collection of internal revenue. (R. S. § 3671.)

(25) **United States Penitentiary, McNeils Island, Wash.** Estimates in detail for all expenses of maintaining the United States Penitentiary at McNeils Island, Washington, including salaries of all necessary officers and employees therefor, the estimates to be submitted to the Bureau of the Budget by the Attorney General. (May 27, 1908, c. 200, § 1, 35 Stat. 374.)

(26) **Personal services in Indian Office.** Estimates in detail for all personal services required in the Indian Office. (Aug. 23, 1912, c. 350,‡ 37 Stat. 396.)

* "§ 18" should be "§ 8."
† The words "and Naturalization" should be omitted.
‡ "§ 1," should be inserted.

Editorial comment.—In connection with an appropriation for miscellaneous expenses of the Employees' Compensation Commission in Act Sept. 8, 1916, c. 464, 39 Stat. 821, it was provided that "Estimates in detail shall hereafter be annually submitted hereunder."

The insertion of the word "postal" before the words "free delivery service" in paragraph 13 would make for clearer understanding of this phrase.

Historical Note

This is a combination of provisions found in the various acts cited in the credits to the different paragraphs of the text, except as otherwise indicated below.

The original text of some of these provisions specified the officer who should submit the estimates to Congress, and some of them provided for submission in the Book of Estimates. These provisions were doubtless omitted as superseded by chapter 1 of this title.

Paragraph 1 is part of Act June 20, 1874, § 4, cited to the text. Provisions of that section omitted here made appropriations for the fiscal year 1875, and repealed Act May 23, 1872 (incorporated in R. S. § 3689) and all acts and parts of acts making permanent appropriations for the expenses of the national loan, except Act July 14, 1870, § 2 (also incorporated in R. S. § 3689).

Paragraph 2 is from a proviso accompanying an appropriation to pay certain judgments in the deficiency appropriation act for the fiscal year 1904, cited to the text. That proviso so far as it provided that the estimates in question should be transmitted through the Treasury Department was superseded by chapter 1 of this title.

Paragraph 3 was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1883, cited to the text.

Paragraph 4 is from the deficiency appropriation act for the fiscal year 1911, cited to the text. Other provisions of that act in the same connection, repealed all laws making a permanent indefinite appropriation for parting and refining bullion, and provided for the covering into the Treasury of the unexpended balance of such appropriation.

Paragraph 5 is from the deficiency appropriation act for the fiscal year 1912, cited to the text. Other provisions which appeared in that act in the same connection will be found in section 423 of this title.

Paragraph 6 was a provision of the deficiency appropriation act of March 3, 1905, cited to the text. It followed a provision repealing so much of Act June 26, 1884, c. 121, § 15, 23 Stat. 57, as made a permanent appropriation of the receipts for duties on tonnage provided for by said act for the expenses of maintaining the Marine Hospital Service. The words "Public Health and Marine Hospital Service" were changed to "Public Health Service" to conform to Act Aug. 14, 1912, § 1, cited to the text (section 1 of Title 42, The Public Health).

Paragraph 7 is a combination of provisions contained in the acts cited to the text. The Act of March 3, 1917, c. 163, § 1, so cited related to the Federal Farm Loan Bureau. It superseded a somewhat similar provision in the deficiency appro-

priation act for the fiscal year 1916, and prior years, Act Sept. 8, 1916, c. 464, § 1, 39 Stat. 803.

Paragraph 8 is from a provision of the sundry civil appropriation for the fiscal year 1898, cited to the text. The provision in question is set forth at greater length in section 604 of this title. A somewhat similar provision was made by Act March 3, 1893, c. 208, 27 Stat. 603.

Paragraph 9 is from the sundry civil appropriation act for the fiscal year 1909, cited to the text. Other provisions, omitted here, repealed so much of R. S. § 1178 as made a permanent indefinite appropriation for the purchase of trusses.

Paragraph 10 was a part of § 6 of the fortifications appropriation act for the fiscal year 1920, cited to the text.

Paragraph 11 was a proviso annexed to the appropriation for expenses of the Signal Service, including a provision for extensions of the Washington-Alaska Military Cable and Telegraph System, in the Army appropriation act for the fiscal year 1908, cited to the text.

Paragraph 12 is from R. S. § 3667 which was derived from Act July 11, 1870, c. 238, 16 Stat. 222.

Paragraph 13 was a provision of the postal appropriation act for the fiscal year 1898, cited to the text.

Paragraph 14 was a provision of the sundry civil appropriation act for the fiscal year 1916, cited to the text. Similar language appeared in the same appropriation act for the fiscal year 1915, Act Aug. 1, 1914, c. 223, § 1, 38 Stat. 647.

Paragraph 15 was part of section 1 of the pensions appropriation act for the fiscal year 1913, cited to the text.

Provisions for the appointment of a disbursing clerk in the bureau of pensions for the payment of pensions were also contained in that section and are now incorporated in section 5 of Title 38, Pensions, Bonuses, and Veterans' Relief.

Paragraph 16 was a provision of the deficiency appropriation act of March 3, 1903, cited to the text. The words "Department of Commerce and Labor" were changed to "Department of Commerce" to conform to Act March 4, 1913, c. 141, § 1, cited to the text.

Paragraph 17 was part of the sundry civil appropriation act for the fiscal year 1911, cited to the text.

Other provisions of the original text, omitted here, repealed all laws making a permanent indefinite appropriation to pay salaries and contingent expenses of the Steamboat Inspection Service.

Paragraph 18 is part of section 12 of the Alaska Salmon Fisheries Act cited to the text. That section is set out as a whole in section 241 of Title 48, Territories and Insular Possessions.

Paragraph 19 was part of the sundry civil appropriation act for the fiscal year 1911, cited to the text. The original text required the estimates mentioned to be submitted to Congress by the Secretary of Commerce and Labor in the Book of Estimates. It was evidently changed to read as set forth in the present text to conform to chapter 1 of this title, and Act March 4, 1913, c. 141, § 1, 37 Stat. 736, changing the designation of the former Secretary of Commerce and Labor. A provision of the original text, omitted here, repealed so much of Act June 19, 1886, as made a permanent indefinite appropriation to pay compensation to shipping commissioners and their clerks.

Paragraph 20 was a provision of the sundry civil appropriation act for the fiscal year 1903, cited to the text.

Paragraph 21 was a provision of the sundry civil appropriation act for the fiscal year 1916, cited to the text.

Paragraph 22 was a provision annexed to the appropriation for the Department of Labor for the period from the creation of the Department to the end of the fiscal year 1914, in the act making appropriations for the first session of the Sixty-Third Congress, cited to the text.

Paragraph 23 was a provision of the sundry civil appropriation act for the fiscal year ending June 30, 1908, cited to the text. The words "Department of Commerce and Labor" were doubtless changed to "Department of Labor" to conform to Act March 4, 1913, c. 141, § 3, 37 Stat. 737.

The Bureau of Immigration and Naturalization was divided into two bureaus to be known as the Bureau of Immigration and the Bureau of Naturalization by the act creating the Department of Labor, Act March 4, 1913, c. 141, § 3, 37 Stat. 737.

Paragraph 24 is from R. S. § 3671, which was derived from Act March 3, 1869, c. 121, § 1, 15 Stat. 290.

Paragraph 25 is from the sundry civil appropriation act, for the fiscal year 1909, cited to the text. The original text has been somewhat changed to conform to chapter 1 of this title.

Paragraph 26 was a provision accompanying appropriations for the Indian Office in the Act cited to the text. Such provision with other provisions accompanying it in the act from which it was taken, is also set forth in section 61 of Title 25, Indians.

Act March 2, 1907, c. 2511, 34 Stat. 1170, required estimates for the next fiscal year to be submitted covering transportation of the Army and its supplies in one estimate, and additional estimates to be submitted covering other items theretofore carried under the head of transportation of the Army and its supplies. It was doubtless omitted as temporary.

Requirements as to estimates for construction of the Isthmian Canal, imposed by Act June 25, 1910, c. 384, § 5, 36 Stat. 773, were doubtless omitted as temporary.

Appropriation acts for many years have

authorized the employment by the Secretary of War of skilled draftsmen and other services in the Signal Office and the office of Chief of Ordnance and of draftsmen, civil engineers, and other services in the office of the Chief of Engineers, to carry into effect appropriations for fortifications, etc., rivers and harbors, and surveys, requiring the Secretary of War to report to Congress each year the number of persons so employed, their duties, and the amount paid to each. The provision for the fiscal year 1928 was by Act Feb. 23, 1927, c. 167, 44 Stat. 1118, 1124, 1127.

Cross-References

The Secretary of the Treasury is directed to submit to Congress annually detailed estimates of appropriations for expenses, both in the Office of the Supervising Architect and in the field, of the administrative work of carrying into effect the provisions of public-building acts, so far as they relate to public buildings under control of the Treasury Department; and to submit annually in the Estimates a statement showing the names of all persons whose salaries or compensation are paid from said appropriations, their duties, and the rate of compensation and the amount paid to each of them, by section 683 of this title.

Specific estimates for salaries for all personal services, in the Office of the Supervising Architect of the Treasury, are required by section 251 of Title 40, Public Buildings, Property, and Works.

No estimate for appropriations for the construction or modernization of batteries, etc., shall be submitted until after plans and estimates of cost have been prepared therefor, by section 605 of this title.

The requisites of estimates of appropriations for the Bureau of Fisheries are prescribed by section 619 of this title.

The Coast Guard Commandant is required to prepare and submit to the Secretary of the Treasury estimates for the support of the service, by section 91 of Title 14, Coast Guard.

The Commissioner of Internal Revenue is required to make a detailed statement to Congress once in each year as to how he has expended the sum appropriated for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, and also a detailed statement of all miscellaneous expenditures in the Bureau of Internal Revenue for which appropriation is made by section 1243 of Title 26, Internal Revenue.

Provisions requiring the Attorney General to submit estimates for the United States Penitentiary at Fort Leavenworth, Kansas, are contained in section 765 of Title 18, Criminal Code and Criminal Procedure.

The permanent census office mentioned in paragraph 20, was established by a provision incorporated in section 1 of Title 13, Census.

The managers of the National Home for Disabled Volunteer Soldiers are required to furnish the Secretary of War detailed estimates for the support of the Home, and the latter is required to include such estimates in his estimates for his Department, by section 719 of this title.

Notes of Decisions

1. Payment of judgments.—All authority and discretion in regard to the approval or disapproval of the payment of Indian depredation judgments from annuities and property of Indians or from appropriations on their account are vested in the Secretary of the Interior. (1895) 21 Op. Atty. Gen. 131.

§ 584. **Expenses of Liberty loans.** Estimates of appropriations shall be submitted to Congress in the manner prescribed by law for expenses arising in connection with the loans authorized by the various Liberty Bond Acts and the Victory Liberty Loan Act. (May 29, 1920, c. 214, § 1, 41 Stat. 646.)

Historical Note

This is from the legislative, executive, and judicial appropriation act for the year 1921, cited to the text. Provisions of the original text omitted here related to the use and disposition of certain appropriations.

§ 585. **Manner of communicating estimates.** Estimates of expenditures and appropriations communicated to the Bureau of the Budget shall specify, as nearly as may be convenient, the sources from which such estimates are derived, and the calculations upon which they are founded, and shall discriminate between such estimates as are

conjectural in their character and such as are framed upon actual information and applications from disbursing officers. They shall also give references to any law or treaty by which the proposed expenditures are, respectively, authorized, specifying the date of each, and the volume and page of the Statutes at Large, or of this Code, as the case may be, and the section of the Act in which the authority is to be found. (R. S. § 3660; June 10, 1921, c. 18, § 215, 42 Stat. 23.)

Editorial comment.—From sections 204 and 216 of the Budget and Accounting Act of 1921 (sections 24 and 581 of this title) it would seem that prior laws specifying the "form, manner and detail" in which estimates shall be submitted, no longer apply to departmental estimates submitted to the Bureau of the Budget, but do apply to the Budget estimates prepared by that Bureau. This section and some other sections of this chapter are not wholly consistent with that interpretation of the Act of 1921.

Historical Note

This is R. S. § 3660, which was derived from Act Aug. 26, 1842, c. 202, § 14, 5 Stat. 525, somewhat changed because of the Act of June 10, 1921, c. 18, cited to the text. The original text read: "The heads of Departments, in communicating estimates of expenditures and appropriations to Congress, or to any of the committees thereof, shall specify," etc.

Cross-References

Further requirements as to the order and arrangement of estimates for expenses of the government, and of the general appropriation bills are made by section 586 of this title.

Notes of Decisions

1. **Effect of estimates.**—Congress has power to make appropriations for objects not included in the estimates as well as to reject those included. (1878) 16 Op. Atty. Gen. 213.

2. **Purpose of expenditures.**—This section contemplates that estimates by heads of departments shall be confined to expenditures under existing laws, and does not include estimates for appropriations to pay claims which the government is not bound to pay. Pitman v. U. S. (1885) 20 Ct. Cl. 253.

3. **Statutory restrictions.**—The statute restricts in every possible way the expenditures, expenses, and liabilities of the government, so far as executive officers are concerned, to the specific appropriation for each fiscal year. Wilder v. U. S. (1880) 16 Ct. Cl. 528.

§ 586. Order and arrangement of estimates and general appropriation bills. The estimates for expenses of the Government, and supplemental or deficiency estimates, except those for sundry civil expenses, shall be prepared and submitted each year according to the order and arrangement of the appropriation Acts for the year preceding. And any changes in such order and arrangement, and transfers of salaries from one office or bureau to another office or bureau, or the consolidation of offices or bureaus desired by the head of any executive department may be submitted by note in the estimates. The committees of Congress in reporting general appropriation bills shall, as far as may be practicable, follow the general order and arrangement of the respective appropriation Acts for the year preceding. (June 22, 1906, c. 3514, § 4, 34 Stat. 448; Sept. 8, 1916, c. 464, § 4, 39 Stat. 830; June 10, 1921, c. 18, §§ 203, 204, 42 Stat. 21.)

Historical Note

This section, except the words "and supplemental or deficiency estimates" are from Act June 22, 1906, c. 3514, § 4, cited to the text. Other provisions of that section, requiring all estimates to be furnished the Secretary of the Treasury for inclusion in the Book of Estimates, and special or additional estimates to be submitted only in specified cases, were probably omitted as superseded by chapter 1 of this title.

The words "and supplemental and deficiency estimates" are apparently based on Act Sept. 8, 1916, c. 464, § 4, cited to the text, requiring special or additional estimates to conform to the requirements

of the Act of 1906, Act June 10, 1921, c. 18, § 203, providing for supplemental or deficiency estimates, and section 204, requiring them to conform to the requirements of existing laws.

A provision of Act June 3, 1902, c. 985, 32 Stat. 303, requiring estimates for the Department of Agriculture to be submitted according to the order and arrangement of the Act for the year preceding, was probably omitted from the Code as superseded by this section.

Cross-References

Estimates transmitted to the Bureau of the Budget for submission to Congress, which do not comply with the provisions of this section, are to be rearranged so as to comply with said requirements, by section 587 of this title.

§ 587. Estimates not conforming to requirements rearranged. When estimates hereafter transmitted to the Bureau of the Budget for submission to Congress do not in form and arrangement comply with the provisions of section 586 of this title, they shall be rearranged so as to comply with said requirements of law. (Mar. 4, 1909, c. 297, § 4, 35 Stat. 907; June 10, 1921, c. 18, §§ 204, 215, 42 Stat. 21, 23.)

Editorial comment.—It has been suggested that this section was superseded by the Budget and Accounting Act (chapter 1 of this title). See, in this connection, the editorial comment on section 585 of this title.

Historical Note

This section is a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1910, cited to the text, evidently changed in an attempt to make it conform to sections 204 and 215 of the Act of 1910, also cited to the text. The original text referred to estimates transmitted to the "Treasury" and provided for rearrangement "under direction of the Secretary of the Treasury."

§ 588. Estimates for printing and binding; only appropriations made for printing and binding used therefor. There shall be submitted in the regular annual estimates under and as a part of the expenses for "printing and binding," estimates for all printing and binding required by each of the executive departments, their bureaus and offices, and other Government establishments at Washington, District of Columbia, for each fiscal year; and no appropriations other than those made specifically and solely for printing and binding shall be used for such purposes in any executive department or other Government establishment in the District of Columbia: *Provided,* That nothing in this section shall apply to stamped envelopes, or envelopes and articles of stationery other than letterheads and noteheads, printed in the course of manufacture, or to so much of the printing and binding as is necessary to expedite the work of that branch of The Adjutant General's Office that was formerly known as the Record and Pension Office of the War Department. (June 30, 1906, c. 3914, § 2, 34 Stat. 762; Mar. 2, 1907, c. 2511, 34 Stat. 1158; Mar. 4, 1907, c. 2918, § 1, 34 Stat. 1367; June 10, 1921, c. 18, § 215, 42 Stat. 23.)

Historical Note

The provisions of this section, down to the words "course of manufacture," are from Act June 30, 1906, c. 3914, § 2, cited to the text. The rest of the section is from Act March 4, 1907, c. 2918, § 1, also cited to the text. The words "to Congress" which followed the words "regular annual estimates" in the Act of 1906, were evidently omitted to conform to section 23 of this title. The words "Military Secretary's Office" in the Act of March 4, 1907, were evidently changed to "Adjutant General's Office" to conform to Act March 2, 1907, c. 2511, cited to the text.

Cross-References

Estimates by the Public Printer of the quantity of paper required for the public printing and binding, and of the sums required for salaries, wages, and other expenses of the Government Printing Office, are required by sections 36 and 37 of Title 44, Public Printing and Documents.

Estimates of the probable cost of all publications of the Executive Departments, bureaus, etc., required by law to be printed, are to be obtained from the Public Printer, and the application of appropriations thereto is provided for, by section 214 of Title 44, Public Printing and Documents.

Reports of the Committee on Printing of either House of Congress recommending printing and binding for Congress chargeable to the appropriation therefor, are to contain estimates of the cost thereof and of the cost of work previously ordered by Congress within the same fiscal year, by section 145 of Title 44, Public Printing and Documents.

Notes of Decisions

1. **Where printing done.**—All executive officers of government are required by section 116 of Title 44, Public Printing and Documents, and this section, to have all government printing done at Government Printing Office, except in cases otherwise provided by law, and such officers cannot obligate United States by acting contrary to said acts. Davis v. U. S. (1924) 59 Ct. Cl. 197.

§ 589. Same; other officers. The annual estimate for appropriations for every other public officer who is authorized to have printing and binding done at the Government Printing Office for the use of his public office, shall include such sum or sums as may seem necessary "for printing and binding, to be executed under the direction of the Public Printer." (R. S. § 3661; July 31, 1876, c. 246, 19 Stat. 105; Jan. 12, 1895, c. 23, § 17, 28 Stat. 603.)

Editorial comment.—The words "every other public officer" used in the section probably refers back to section 588, ante, of this title.

Historical Note

This is from R. S. § 3661, which was derived from Act May 8, 1872, c. 140, § 2, 17 Stat. 82.

Provisions of the original text concerning the head of each executive department were evidently omitted as superseded by section 588 of this title.

The words "Congressional Printing Office" and "Congressional Printer" were evidently changed to "Government Printing Office" and "Public Printer" to conform to Act July 31, 1876, c. 246, and Act Jan. 12, 1895, c. 23, § 17, cited to the text.

§ 590. Same; Geological Survey, Coast and Geodetic Survey, Hydrographic Office, and Signal Service. All printing and engraving for the Geological Survey, the Coast and Geodetic Survey, the Hydrographic Office of the Navy Department, and the Signal Service shall be estimated for separately and in detail, and appropriated for separately for each of said bureaus. (Aug. 4, 1886, c. 902, § 1, 24 Stat. 255.)

Historical Note

This was a proviso in the sundry civil appropriation act for the fiscal year 1887, cited to the text.

Cross-References

Estimates, and specific appropriations in pursuance thereof, for the monographs and bulletins of the Geological Survey are required by section 261 of Title 44, Public Printing and Documents.

§ 591. Estimates; for salaries. All estimates for the compensation of officers authorized by law to be employed shall be founded upon the express provisions of law, and not upon the authority of executive distribution. (R. S. § 3662.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1853, c. 175, § 8, 10 Stat. 670.

Cross-References

Reports in the annual estimates of the number and salaries of inefficient employés are required by section 592 of this title.

Statements in the annual estimates of the condition of business in the Departments, etc., are required by section 593 of this title.

§ 592. Reports in estimates of number and salaries of inefficient employees. It shall be the duty of the heads of the several executive departments of the Government to report to Congress each year in the annual estimates the number of employees in each bureau and office and the salaries of each who are below a fair standard of efficiency. (July 11, 1890, c. 667, § 2, 26 Stat. 268; June 10, 1921, c. 18, § 204, 42 Stat. 21.*)

* "June 10, 1921, c. 18, § 204, 42 Stat. 21," should probably be omitted.

Historical Note

This was a proviso of the legislative, executive, and judicial appropriation act of July 11, 1890, cited to the text.

§ 593. Statements in estimates of condition of business in departments. There shall be submitted to Congress, annually, in the estimates, a statement as to the condition of business in each department or other Government establishment, showing whether any part of the same is in arrears, and, if so, in what divisions of the respective bureaus and offices of his department or other Government establishment such arrears exist, the extent thereof, and the reasons therefor, and also a statement of the number and compensation of employees appropriated for in one bureau or office who have been detailed to another bureau or office for a period exceeding one year. (Mar. 2, 1895, c. 177, § 7, 28 Stat. 808; June 10, 1921, c. 18, § 204, 42 Stat. 21.)

Historical Note

This section was part of the legislative, executive, and judicial appropriation act of March 2, 1895, cited to the text. It was evidently changed somewhat to conform to the Act of 1921, cited to the text. Section 204 of that Act made existing laws applicable to the estimates contained in the Budget.

Section 8 of the Act of March 2, 1895, repealed R. S. § 194.

§ 594. Requisites of estimates for appropriations for public works. Whenever any estimate submitted to the Bureau of the Budget asks an appropriation for any new specific expenditure, such as the erection of a public building, or the construction of any public work, requiring a plan before the building or work can be properly completed, such estimate shall be accompanied by full plans and detailed estimates of the cost of the whole work. All subsequent estimates for any such work shall state the original estimated cost, the aggregate amount theretofore appropriated for the same, and the amount actually expended thereupon, as well as the amount asked for the current year for which such estimate is made. And if the amount asked is in excess of the original estimate, the full reasons for the excess, and the extent of the anticipated excess, shall be also stated. (R. S. § 3663; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249; June 10, 1921, c. 18, § 215, 42 Stat. 23.)

Editorial comment.—See the comment on section 585 of this title, applicable here.

Historical Note

This is R. S. § 3663 (Act June 17, 1844, c. 105, § 2, 5 Stat. 693; Act March 3, 1855, c. 175, § 8, 10 Stat. 670) as amended by Act Feb. 27, 1877, c. 69, § 1, cited to the text, with the word "Congress" changed to "Bureau of the Budget" in an attempt to conform to section 215 of the Act of June 10, 1921, cited to the text.

The amendment by the Act of 1877, substituted the word "plans" where it now appears for "plan."

Cross-References

Statements in the annual estimates of buildings rented by the Executive Departments are required by section 595 of this title.

An annual report in the estimates of the expenditure of the appropriation for repairs, etc., of public buildings is required by section 601 of this title.

Further restrictions on contracts and expenditures for public buildings and sites therefor, requiring previous appropriations, and plans, estimates, etc., are contained in section 267 of Title 40, Public Buildings, Property and Works.

Restrictions on contracts for the rent of buildings for the Government until an appropriation is made therefor are imposed by section 34 of Title 40.

No act authorizing the purchase of a site and erection of a public building thereon is to be construed to appropriate money unless it makes such appropriation in express language, by section 263 of Title 40.

Detailed estimates of appropriations for expenses of the administrative work of carrying into effect the provisions of public building acts, so far as they relate to public buildings under control of the Treasury Department, are required by section 683 of this title.

§ 595. Statements in estimates of buildings rented. There shall be prepared and submitted to Congress each year, in the annual estimates, a statement of the buildings rented within the District of Columbia for the use of the Government, the purposes for which rented, the annual rental of each, the area of each building in square feet of available floor space for Government uses, the rate paid per square foot for such floor space, the assessed valuation of each building, what proportion, if any, of the rental paid includes heat, light, elevator, or other service, and the cost of the care, maintenance, and operation of each building per square foot of floor space of the building or portion of building rented; also a statement of the number of all other buildings rented by the several executive departments, the purposes for which rented, and the annual rental of each. (Mar. 3, 1883, c. 128, § 1, 22 Stat. 552; July 16, 1892, c. 196, § 1, 27 Stat. 199; May 1, 1913, c. 1, § 3, 38 Stat. 3; May 20,* 1920, c. 214, § 7, 41 Stat. 691; June 10, 1921, c. 18, § 204, 42 Stat. 21.)

* "May 20" should be "May 29."

Editorial comment.—See comment on section 601 of this title.

Historical Note

This section down to the semi-colon, is from the Act of July 16, 1892, c. 196, § 1, cited to the text, as modified by the Acts of May 1, 1913 and May 29, 1920, also cited to the text. Each of the two acts last mentioned provided that the statement required by the Act of 1892 should indicate certain facts. The original text of this part of the section has been changed somewhat, apparently to conform to the Act of June 10, 1921, c. 18, cited to the text, section 204 of which makes existing laws applicable to the Budget estimates.

The part of the section following the semi-colon is from the Act of March 3, 1883, c. 128, § 1, cited to the text, which was evidently regarded as superseded in part by the preceding provisions of the section, and hence was limited to "other buildings."

§ 596. Estimates; statements in, of Government-owned buildings in District of Columbia. There shall also be submitted to Congress annually in the estimates a statement giving for each of the Government-owned buildings in the District of Columbia under the jurisdiction of each department and independent establishment of the Gov-

ernment the following information for the preceding fiscal year: The location and valuation of each building, the purpose or purposes for which used, and the cost of care, maintenance, upkeep, and operation thereof per square foot of floor space. (June 5, 1920, c. 235, § 3, 41 Stat. 945; June 10, 1921, c. 18, § 204, 42 Stat. 21.)

Historical Note

This is from Act June 5, 1920, c. 235, § 3, cited to the text, the language of which has evidently been somewhat changed in an attempt to conform to Act June 10, 1921, c. 18, § 204, cited to the text.

§ 597. Same; additional explanations. Whenever, in the annual estimates of expenditures required for the coming year for any department, the usual items of such estimates vary materially in amount from the appropriation ordinarily asked for the object named, and especially from the appropriation granted for the same objects for the preceding year, and whenever new items not theretofore usual are introduced into such estimates for any year, the estimates shall be accompanied by minute and full explanations of all such variations and new items, showing the reasons and grounds upon which the amounts are required, and the different items added. (R. S. § 3664.)

Historical Note

This section of the Revised Statutes was derived from Act June 17, 1844, c. 105, § 2, 5 Stat. 693; Act March 3, 1855, c. 175, § 8, 10 Stat. 670.

Some changes have apparently been made in the original text in an attempt to conform to chapter 1 and section 581 of this title.

§ 598. Same; amount of outstanding appropriations designated. Estimates of expenditures required in any department during the year then approaching, shall designate not only the amount required to be appropriated for the next fiscal year, but also the amount of the outstanding appropriation, if there be any, which will probably be required for each particular item of expenditure. (R. S. § 3665.)

Historical Note

This section of the Revised Statutes was derived from Act June 2, 1858, c. 82, § 2, 11 Stat. 308.

Some changes have apparently been made in the original text in an attempt to conform to chapter 1, and section 581, of this title.

Cross-References

The Bureau of the Budget is required to annex to the annual estimates a statement of the appropriations for the service of the year, made by former acts, by section 624 of this title.

The estimates for expenses of the Government, except those for sundry civil expenses, are to be prepared according to the order and arrangement of the appropriation acts for the year preceding by section 586 of this title.

The requisites of estimates for expenses in connection with foreign trade relations and for maintenance of a Division of Far Eastern Affairs in the Department of State are prescribed, by section 157 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

1. **Statutory restrictions.**—The statute restricts in every possible way the expenditures, expenses, and liabilities of the government, so far as executive officers are concerned, to the specific appropriations for each fiscal year. Wilder v. U. S. (1880) 16 Ct. Cl. 528.

§ 599. Same; statement of persons employed at mints and assay offices. The number of persons employed, other than workmen and

adjusters, and the compensation paid to each, at each mint and assay office, out of appropriations made for wages of workmen, adjusters, and other employees shall be reported to Congress each year in the annual estimates. (Feb. 3, 1905, c. 297, § 1, 33 Stat. 657.)

Editorial comment.—See comment on section 601 of this title.

Historical Note

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1906, cited to the text.

A like provision was made by the similar appropriation act for the preceding year, Act March 18, 1904, c. 716, § 1, 33 Stat. 111.

A reference in the original text to the Secretary of the Treasury as the officer required to report to Congress, has apparently been omitted as superseded by chapter 1 of this title.

§ 600. Same; for Coast Guard. Estimates for the Coast Guard shall be submitted, in detail, showing separately, the amount required for pay of officers, rations for officers, pay of crews, rations of crews, fuel, repairs and outfits, ship chandlery, and for traveling and contingent expenses. There shall also be included in the annual Budget a statement showing the authorized number of officers and cadets in the Coast Guard, their rank and pay; also the number of men constituting the crews of vessels in said service. (Mar. 2, 1889, c. 410, § 1, 25 Stat. 907; Jan. 28, 1915, c. 20, § 1, 38 Stat. 800; June 10, 1921, c. 18, § 204, 42 Stat. 21.)

Historical Note

This is from Act March 2, 1889, c. 410, § 1, cited to the text.

Upon incorporation into the Code, the words "Revenue Cutter Service" were evidently changed to "Coast Guard" to conform to section 1 of Title 14, Coast Guard, and other changes were evidently made to conform to chapter 1, and section 581 of this title.

Cross-References

The Secretary of the Treasury is required to make a detailed statement of the expenditures for the Coast Guard by section 37 of Title 14, Coast Guard.

Annual reports by the commandant of the Coast Guard are required by section 36 of Title 14, Coast Guard.

§ 601. Same; reports of persons employed on public buildings and expenditures for repairs. There shall be reported to Congress in the annual estimates the number of persons employed outside of the District of Columbia, as superintendents, clerks, watchmen and otherwise, and paid from appropriations for the construction of public buildings showing where said persons are employed, in what capacity, the length of time and at what rate of compensation, and a statement of the expenditure of the appropriation for "repairs and preservation of public buildings" which shall show the amount expended on each public building and the number of persons employed and paid salaries from such appropriation. (Mar. 3, 1887, c. 362, 24 Stat. 512; Aug. 30, 1890, c. 837, § 1, 26 Stat. 374.)

Editorial comment.—It has been suggested that the duties imposed by this section should be stated as duties of the Secretary of the Treasury as in the original text. If so, it is not clear why a similar change should not be made in section 599 of this title, and the part of section 595 of this title preceding the semicolon.

Historical Note

This is a combination of provisions contained in the acts cited to the text.

Upon incorporation into the Code, references in each act to the Secretary of

the Treasury as the officer required to make the reports, and a reference in the Act of 1890 to the Book of Estimates, were apparently eliminated in an attempt to conform to chapter 1, and section 581 of this title.

§ 602. Same; appropriations to refund illegally assessed or collected revenue taxes. The Secretary of the Treasury shall submit annually an estimate of appropriations to refund and pay back duties or taxes erroneously or illegally assessed or collected under the internal-revenue laws, and to pay judgments, including interest and costs, rendered for taxes or penalties erroneously or illegally assessed or collected under the internal-revenue laws. (Nov. 23, 1921, c. 136, § 1317, 42 Stat. 314.)

Historical Note

This section was part of the Revenue Act of 1921, cited to the text. A portion of the original text, omitted here, repealed the paragraph of R. S. § 3689 which made a permanent appropriation to refund and pay back duties, erroneously or illegally assessed or collected under the internal revenue laws.

Provisions similar to those of this section were contained in Act Feb. 24, 1919, c. 18, § 1316c, 40 Stat. 1145, which was repealed by Act Nov. 23, 1921, c. 136, § 1400, 42 Stat. 320.

Notes of Decisions

1. Manner of payment.—Congress may provide, as it did in section 842 of Title 28, Judicial Code and Judiciary, that after judgment for recovery of money exacted by or paid to collector of internal revenue under color of authority, particularly in matters pertaining to collection and disbursement of taxes and revenue, on certificate by court that there was probable cause for act done by collector, or that he acted under directions of Secretary of Treasury, or other proper government officer, execution may not issue on judgment against collector, and may require amount so recovered to be paid out of proper appropriation from Treasury. White v. Weiss (D. C. Ohio, 1925) 7 F.(2d) 139.

§ 603. Same; for Foreign Service. Except as hereinafter otherwise provided, estimates for the annual expenditures of the expenses of the Foreign Service shall state the entire amount required for its support, including all commercial agents and other* officers, whether paid by fees or otherwise, specifying the compensation to be allowed or deemed advisable in each individual case, but estimates for rent of consular offices, and, under contingent expenses, the amount required annually to be expended at consular offices for purposes within the discretion of the department shall be segregated and submitted separately. (July 1, 1882, c. 262, 22 Stat. 133; Mar. 3, 1905, c. 1484, § 1, 33 Stat. 1214; May 24, 1924, c. 182, § 1, 43 Stat. 140.)

* "commercial agents and other" should be omitted. See section 54 of Title 22, Foreign Relations and Intercourse.

Historical Note

This section is a combination of provisions contained in Act July 1, 1882, c. 262, and Act March 3, 1905, c. 1484, § 1, cited to the text.

Upon incorporation into the Code, the words "Foreign Service" were substituted for "diplomatic and consular service" appearing in the Act of 1882, and "consular service" appearing in the Act of 1905, to conform to Act May 24, 1924, c. 182, § 1, cited to the text. See section 1 of Title 22, Foreign Relations and Intercourse.

References in the original text to the Secretary of State were apparently eliminated in an attempt to conform to chapter 1, and section 581, of this title.

The grade of commercial agent was abolished by the Act of April 5, 1906, c. 1366, § 3, 34 Stat. 100.

Cross-References

A provision for estimates for the acquisition of sites and buildings for the use of diplomatic and consular establishments is made by section 133 of Title 22, Foreign Relations and Intercourse.

§ 604. Same; for river and harbor improvements. The Secretary of War shall annually submit estimates in detail for river and harbor improvements required for the ensuing fiscal year to the Bureau of the Budget to be included in and carried into the sum total of, the Budget. (June 4, 1897, c. 2, § 1, 30 Stat. 48; June 10, 1921, c. 18, § 215, 42 Stat. 23.)

Editorial comment.—The words "in detail" may be superseded by section 24 of this title. See comment on section 585 of this title.

Historical Note

This is from the Sundry Civil Appropriation Act of June 4, 1897, c. 2, cited to the text.

Upon incorporation into the Code, the words "Bureau of the Budget" were substituted for "Secretary of the Treasury" and the word "Budget" for "Book of Estimates" to conform to Act June 10, 1921, c. 18, § 215, cited to the text.

A provision somewhat similar to this section was made by Act March 3, 1893, c. 208, 27 Stat. 603.

§ 605. Same; for construction or modernization of batteries. Estimates shall not be submitted to Congress for appropriations for construction of gun and mortar batteries, modernizing older emplacements, and other construction under the Engineer Department, in connection with fortifications, until after plans and estimates of cost shall have been prepared therefor. (Feb. 13, 1913, c. 51, 37 Stat. 671.)

Historical Note

This was a provision of the fortifications appropriation act of Feb. 13, 1913, cited to the text.

§ 606. Same; for fortifications for insular possessions. All estimates for fortifications for insular possessions of the United States shall be made and submitted to Congress showing amount proposed to be expended at each harbor in each insular possession. (Mar. 3, 1905, c. 1402, 33 Stat. 847.)

Historical Note

This was a provision of the fortifications appropriation act of March 3, 1905, cited to the text.

§ 609. Same; statements in of number and salaries of persons employed under appropriations for increase of Navy. It shall be the duty of the Secretary of the Navy to submit in the estimates, under the respective bureaus and offices of the Navy Department, a statement in detail, showing the number of persons employed during the previous fiscal year and the rate of compensation of each under appropriations for "Increase of the Navy" or other general appropriations. (Apr. 17, 1900, c. 192, § 1, 31 Stat. 117; June 10, 1921, c. 18, § 204, 42 Stat. 21.)

Historical Note

This is from the Legislative, Executive, and Judicial Appropriation Act of April 17, 1900, c. 192, cited to the text.

Upon incorporation into the Code, the words "in the Book of Estimates" were apparently changed to "estimates" to conform to chapter 1, and section 581, of this title.

For current appropriation for "Boundary Line, Alaska and Canada, and the United States and Canada," see Act Feb. 24, 1927, c. 189, Title I, 44 Stat. 1185.

§ 610. Same; for Post Office Department. There shall be submitted to Congress at each annual session an estimate of the amount that

will be required by the Post Office Department for the ensuing fiscal year, under each of the following heads:

First. Transportation of the mails.
Second. Compensation of postmasters.
Third. Compensation of clerks in post offices.
Fourth. Compensation of letter carriers.
Fifth. Compensation of blank agents and assistants.
Sixth. Mail depredations and special agents.
Seventh. Postage stamps and envelopes.
Eighth. Ship, steamboat, and way letters.
Ninth. Dead letters.
Tenth. Mail bags.
Eleventh. Mail locks, keys, and stamps.
Twelfth. Wrapping paper.
Thirteenth. Office furniture.
Fourteenth. Advertising.
Fifteenth. Balances to foreign countries.
Sixteenth. Rent, light, and fuel for post offices.
Seventeenth. Stationery.
Eighteenth. Miscellaneous.

Such estimates shall show the sums paid under each head, and the names of the persons to whom payment[s] are made out of the miscellaneous fund; but the names of persons employed in detecting depredations on the mail, and of other confidential agents, need not be disclosed. (R. S. § 3668.)

Editorial comment.—It is not clear why the following provision of Act June 9, 1896, c. 386, 29 Stat. 316, was omitted from the Code: "The Postmaster-General shall for the fiscal year eighteen hundred and ninety-eight, and annually thereafter, submit in the annual estimates to Congress estimates in detail for all expenses of the money-order branch of the postal service."

Historical Note

This section of the Revised Statutes was derived from Act June 8, 1872, c. 335, § 9, 17 Stat. 286.

A reference in the original text to the Postmaster General as the officer required to submit the estimate to Congress was apparently eliminated to conform to chapter 1, and section 581, of this title.

Act March 2, 1907, c. 2513, 34 Stat. 1217, required the Postmaster General to submit in his annual report, certain estimates, and a statement of receipts and expenditures for the preceding completed fiscal year. It was superseded by a similar provision in Act May 27, 1908, c. 206, 35 Stat. 418, incorporated into the Code as section 388 of Title 5, Executive Departments and Government Officers and Employees.

Cross-References

The form of estimates for railway mail service is prescribed by section 611 of this title.

Annual estimates in detail of expenses of the free delivery service are required by paragraph 13 of section 583 of this title.

§ 611. Same; for Railway Mail Service. In making estimates for Railway Mail Service, the estimate for postal-car service shall be separated from the general estimates; and in case any increase or diminution of service by postal cars shall be made by the Postmaster General, the reasons therefor shall be given in his annual report next succeeding such increase or diminution. (Mar. 3, 1879, c. 180, § 1, 20 Stat. 357.)

Historical Note

This was a proviso following an appropriation for inland mail transportation in the postal appropriation act for the fiscal year 1880, cited to the text.

§ 612. Same; Geological Survey. The estimates for the Geological Survey shall be itemized, and there shall be submitted in the annual Budget, under each item of appropriation under "General expenses of the Geological Survey," notes showing the number of persons employed and the rate of compensation paid to each from each of said appropriations during the fiscal year next preceding the fiscal year for which estimates are submitted. (Mar. 3, 1887, c. 362, 24 Stat. 527; June 28, 1902, c. 1301, § 1, 32 Stat. 455; June 10, 1921, c. 18, § 204, 42 Stat. 21.)

Historical Note

This section is a combination of provisions contained in Act March 3, 1887, c. 362, and Act June 28, 1902, c. 1301, § 1, cited to the text.

The word "Budget" was evidently substituted for "Book of Estimates" appearing in the original text to conform to section 581 of this title.

A provision of Act March 3, 1901, c. 853, § 1, 31 Stat. 1161, requiring specific estimates for personal services in the office of the Geological Survey, was probably superseded by Act June 28, 1902, c. 1301, § 1, cited to the text.

Cross-References

All printing and engraving for the Geological Survey is required to be estimated for separately and in detail, and appropriated for separately, by section 590 of this title.

§ 613. Same; for Indian appropriations. The estimates for appropriations for the Indian Service shall be presented in such form as to show the amounts required for each of the agencies in the several States or Territories, and for said States and Territories, respectively, and shall be accompanied by a detailed statement, classified in the manner prescribed in section 688 of this title, showing the purposes for which the appropriations are required. (Aug. 15, 1876, c. 289, § 4, 19 Stat. 200; June 30, 1913, c. 4, § 26, 38 Stat. 103.)

Historical Note

The first part of this section, to and including the word "respectively" is from the Act of Aug. 15, 1876, c. 289, § 4, cited to the text. The rest of the section is from Act June 30, 1913, c. 4, § 26, also cited to the text.

Cross-References

Further provisions of Act June 30, 1913, c. 4, § 26, 38 Stat. 103, omitted here, are contained in section 688 of this title.

The Secretary of the Treasury is required annually to transmit to the Speaker of the House of Representatives estimates of the amounts of the receipts to, and expenditures which the Secretary of the Interior recommends to be made for the benefit of Indians from all tribal funds of Indians for the ensuing year, by section 142 of Title 25, Indians.

Estimates in detail for all personal services in the Indian Office are required by paragraph 26 of section 583 of this title.

§ 614. Same; for national parks. The Secretary of the Interior shall submit in the annual estimates, following the estimates for each of the national parks, a classified statement of the receipts and expenditures for the complete fiscal year next preceding the fiscal year for which estimates of appropriations are submitted. (Mar. 4, 1911, c. 285, § 1, 36 Stat. 1421; June 10, 1921, c. 18, § 204, 42 Stat. 21.)

Historical Note

This was a provision of the sundry civil appropriation act of March 4, 1911, cited to the text.

The words "Annual Book of Estimates" appearing in the original text were apparently eliminated, and the word "estimates" substituted, to conform to chapter 1, and section 581, of this title.

§ 615. Same; for expenses of insular and territorial affairs within jurisdiction of Department of Justice. Estimates for appropriations for defraying the necessary expenses incurred in the conduct of insular and other territorial matters and affairs within the jurisdiction of the Department of Justice, including the payment of necessary employees at the seat of government or elsewhere, shall be submitted in detail under legislative, executive, and judicial expenses. (Mar. 3, 1905, c. 1483, § 1, 33 Stat. 1206.)

Historical Note

This was a provision of the sundry civil appropriation act for the fiscal year 1905, cited to the text.

Previous appropriations under this head were made also by the sundry civil appropriation acts.

This section may now be obsolete, or superseded by Act June 22, 1906, c. 3514, 34 Stat. 441, providing that clerks employed on June 30, 1905, under the appropriation "Insular and Territorial affairs, Department of Justice" might, in the discretion of the Attorney General, be transferred to the places provided for them under the Appropriation "Salaries, Department of Justice, 1907" without reference to Act Jan. 16, 1883, c. 27, 22 Stat. 403, and the rules and regulations promulgated thereunder.

§ 616. Same; for expenses of government in Territories. Estimates for expenses of government in the Territories shall be submitted through and be subject to revision by the Department of the Interior. (July 16, 1914, c. 141, § 1, 38 Stat. 479.)

Historical Note

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1915, cited to the text.

§ 617. Same; estimates for Department of Agriculture. The Secretary of Agriculture shall transmit to Congress in the annual estimates detailed estimates for all executive officers, clerks, and employees below the grade of clerk, indicating the salary or compensation of each, necessary to be employed by the various bureaus, offices, and divisions of the Department of Agriculture, and with such estimates shall be included a statement of all executive officers, clerks, and employees below the grade of clerk who may have been employed during the last completed fiscal year on any lump-sum appropriation for the department, and the salary or compensation of each, and a statement showing what proportion of this appropriation* is paid for the quarters occupied by the various branches of the department. (June 3, 1902, c. 985, 32 Stat. 303; Mar. 4, 1915, c. 144, 38 Stat. 1108; Aug. 11, 1916, c. 313, 39 Stat. 492; June 10, 1921, c. 18, § 204, 42 Stat. 21.)

* "this appropriation" should be "the appropriation for rent of buildings and parts of buildings in the District of Columbia."

Editorial comment.—The requirement that the Secretary of Agriculture shall transmit the estimates to Congress does not seem consistent with Chapter 1 of this title, or with changes made in other sections of this chapter.

The words "employees below the grade of clerk," in two places, probably need to be changed to conform to chapter 13 of Title 5, Executive Departments and Government Officers and Employees, but it is not clear what words could be substituted.

Historical Note

This section, except the last part beginning with the words "and a statement showing," is from Act Aug. 11, 1916, c. 313, cited to the text. The words "annual estimates" were evidently substituted for "Book of Estimates" appearing in the original text, in an attempt to conform to chapter 1, and section 581, of this title.

The last part of the section was a proviso to an appropriation for rent of buildings and parts of buildings in the District of Columbia for use of the various bureaus, divisions, and offices of the Department of Agriculture, in Act March 4, 1915, c. 144, cited to the text.

Provisions of Act June 3, 1902, c. 985, cited to the text, Act May 26, 1910, c. 256, 36 Stat. 440, and Act Aug. 10, 1912, c. 284, 37 Stat. 301, concerning statements to be submitted in the Book of Estimates by the Secretary of Agriculture, were probably omitted as superseded by Act Aug. 1, 1916, c. 313, cited to the text.

A provision of Act March 4, 1907, c. 2907, 34 Stat. 1282, requiring the Secretary of Agriculture each year "to submit to Congress classified and detailed estimates of every subject of expenditure intended for the Agricultural Department for the next fiscal year, and detailed reports of all expenditures under any appropriation for such service during the preceding fiscal year," was repealed, with other provisions of said act, by a provision of Act March 4, 1911, c. 238, 36 Stat. 1264.

Cross-References

The provisions of Act Aug. 11, 1916, c. 313, incorporated in this section, are also set forth in section 561 of Title 5, Executive Departments and Government Officers and Employees.

§ 618. Same; for Lighthouse Establishment. There shall be submitted in the annual Budget, under each item of appropriation under the head of "Bureau of Lighthouses," notes showing the number of persons employed and the rate of compensation paid to each from each of said appropriations during the fiscal year next preceding the fiscal year for which estimates are submitted, and following each estimate statements shall be submitted showing the amount required for each object of expenditure mentioned in each of said estimates, together with a statement of the expenditures under each of such objects for the fiscal year terminated next preceding the period of submitting said estimates. (June 28, 1902, c. 1301, § 1, 32 Stat. 433; June 17, 1910, c. 301, § 4, 36 Stat. 537; June 25, 1910, c. 384, § 1, 36 Stat. 755; June 10, 1921, c. 18, § 204, 42 Stat. 21.)

Historical Note

The first part of this section, to and including the words "fiscal year for which estimates are submitted," are from Act June 28, 1902, c. 1301, § 1, cited to the text, and the rest of the section is from Act June 25, 1910, c. 384, § 1, also cited to the text.

Upon incorporation into the Code, the word "Budget" was apparently substituted for "Book of Estimates" to conform to section 581 of this title, and the words "Bureau of Lighthouses" for the words "Light House Establishment" to conform to section 711 of Title 33, Navigation and Navigable Waters.

The provision of Act June 25, 1910, c. 384, § 1, incorporated in this section, superseded a somewhat similar provision of the sundry civil appropriation act for the preceding year, Act March 4, 1909, c. 299, § 1, 35 Stat. 973.

§ 619. Same; for officers and employees for Bureau of Fisheries. The Commissioner of Fisheries shall embrace in the estimates of appropriations for the Bureau of Fisheries for each fiscal year estimates for all officers, clerks, and other employees whose services are permanent and continuous in their character and deemed to be necessary for an efficient and economical execution of the appropriations for the Bureau of Fisheries. (Aug. 5, 1892, c. 380, § 1, 27 Stat. 362.)

Historical Note

This was a provision of the sundry civil appropriation act for the fiscal year ending June 30, 1893, cited to the text.

The words "Commissioner of Fish and Fisheries" were evidently changed to "Commissioner of Fisheries" and the words "Fish Commission" to "Bureau of Fisheries" to conform to the designations in recent appropriation and other acts. See Act July 1, 1918, c. 113, § 1, 40 Stat. 693; Act Feb. 24, 1927, c. 189, Title III, 44 Stat. 1214.

§ 620. **Same; for expenses of regulating immigration.** There shall be submitted, following the estimates under appropriation for expenses of regulating immigration, statements showing the amount required for each object of expenditure mentioned in said estimates, together with a statement of the expenditures under each of such objects for the fiscal year terminated next preceding the period of submitting said estimates. (June 25, 1910, c. 384, § 1, 36 Stat. 764.)

Historical Note

This was a provision of the sundry civil appropriation act for the fiscal year 1911, cited to the text.

A somewhat similar provision of the sundry civil appropriation act for the preceding year, Act March 4, 1909, c. 299, § 1, 35 Stat. 982, was superseded by this provision.

Cross-References

Estimates for the division of information are required by paragraph 23 of section 583 of this title.

§ 621. **Same; for Panama Canal.** The estimates of appropriations for the Panama Canal shall be submitted annually in detail, showing the amounts required for personal services and the amounts required for material including all supplies, under the heads of construction, maintenance, operation, sanitation, and civil government, and following each there shall be submitted notes giving in parallel columns information which will show the number, by grade or classes, of officers, employees, and skilled and unskilled laborers proposed to be paid under each of said appropriations for the ensuing fiscal year and those paid at the close of the fiscal year next preceding the period when said estimates are prepared and submitted; also, in connection with each item for material and miscellaneous purposes other than salaries or pay for personal services, the amounts actually expended or obligated, quantities purchased, and prices paid for material or supplies during the entire fiscal year next preceding the preparation and submission of said estimates.

There shall also be submitted in connection with the foregoing information, statements of actual unit cost of all construction work done, and of estimated unit cost of work proposed to be done, for the fiscal years included in the notes so required to be submitted with the annual estimates. (Aug. 1, 1914, c. 223, § 6, 38 Stat. 679.)

Historical Note

This was a provision of the sundry civil appropriation act for the year 1915, cited to the text.

§ 622. **Same; compiling and printing.** Estimates of appropriations contained in the Budget or transmitted under section 14 of this title, shall be properly classified, compiled, indexed, and printed, by the Bureau of the Budget. (July 7, 1884, c. 334, § 1, 23 Stat. 254; June 10, 1921, c. 18, §§ 204, 211, 42 Stat. 21, 22.)

Historical Note

This was a provision of the deficiency appropriation act of July 7, 1884, cited to the text. Prior to its incorporation into the Code it read as follows: "Hereafter all estimates of appropriations and estimates of deficiencies in appropriations intended for the consideration and seeking the action of any of the committees of Congress shall be transmitted to Congress through the Secretary of the Treasury, and in no other manner; and the said Secretary shall first cause the same to be properly classified, compiled, indexed, and printed, under the supervision of the chief of the division of warrants, estimates, and appropriations of his Department."

The first clause of the original text was evidently omitted as superseded by chapter 1 of this title, and the second clause changed to read as set forth in the present text to conform to that chapter, and to section 581 of this title.

§ 623. Same; elimination of unnecessary words. The Bureau of the Budget shall, as nearly as may be practicable, eliminate from all such* estimates unnecessary words and make uniform the language commonly used in expressing purposes or conditions of appropriations. (June 23, 1913, c. 3, § 3, 38 Stat. 75; June 10, 1921, c. 18, §§ 204, 207, 42 Stat. 21, 22.)

* "such" should be omitted.

Historical Note

This section was part of the sundry civil appropriation act of June 23, 1913, cited to the text. Prior to its incorporation into the Code, it contained additional provisions for the appointment, by the head of each executive department and other Government establishment, of a person to supervise the classification and compilation of estimates, and a provision requiring the persons so designated to have due regard to the requirements of all laws respecting the preparation of estimates. These provisions were probably omitted as superseded by chapter 1, and section 581, of this title. The provision carried into this section originally referred to the persons so designated. It was evidently thought to be rendered applicable to budget estimates, and inapplicable to departmental estimates, by sections 24 and 581 of this title.

§ 624. Same; statements accompanying. The Bureau of the Budget shall annex to the annual estimates of the appropriations required for the public service, a statement of the appropriations for the service of the year, which may have been made by former Acts, and submit, as a part of the appendix to the estimates, such extracts from the annual reports of the several heads of departments and bureaus as relate to estimates for appropriations, and the necessities therefor.* (Mar. 3, 1875, c. 129, § 3, 18 Stat. 370; June 10, 1921, c. 18, §§ 204, 207, 42 Stat. 21, 22.)

* "R. S. § 3670;" should be inserted in the credits to the text.

Historical Note

The first part of this section, to and including the words "former Acts," is from R. S. § 3670, which was derived from Act May 1, 1820, c. 52, § 8, 3 Stat. 568. The words "Bureau of the Budget" have been substituted for "Secretary of the Treasury" to conform to sections 16 and 581 of this title.

The last part of the section is from Act March 3, 1875, c. 129, § 3, cited to the text.

Cross-References

Statements showing the expenditures contemplated and the expenditures of the preceding year are required to follow all estimates for lump sum appropriations, by section 582 of this title.

§ 625. Statement of proceeds of sales of old material. A detailed statement of the proceeds of all sales of old material, condemned stores, supplies, or other public property of any kind except materials,

stores, or supplies sold to officers and soldiers of the Army, or to exploring or surveying expeditions authorized by law shall be submitted to Congress at the beginning of each regular session thereof as a separate communication not included in the annual estimates. (R. S. § 3672; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249; June 25, 1910, c. 384, § 6, 36 Stat. 773.)

Historical Note

This is R. S. § 3672 (Act May 8, 1872, c. 140, § 5, 17 Stat. 83) as amended by Act Feb. 27, 1877, c. 69, § 1, cited to the text, and as modified by Act June 25, 1910, c. 384, also, cited to the text.

The amendment by the Act of 1877 inserted the exception of materials, stores, or supplies sold to officers and soldiers of the Army, etc.

The Act of 1910 required the statement in question to be submitted as a separate communication. R. S. § 3672 had theretofore required its inclusion in the appendix to the book of estimates.

Cross-References

Proceeds of sales of old material, etc., with certain exceptions are to be deposited and covered into the Treasury, by section 487 of this title.

Statements of all money arising from proceeds of public property or from any source other than the postal service, received by the head of each Executive Department or other Government establishment, and of payments from such funds, are required by section 626 of this title.

Notes of Decisions

1. Exchange of property.—The chief of the Bureau of Engraving and Printing cannot be authorized by the Secretary of Treasury to exchange old presses for a new press so that but a small sum in addition will have to be paid; yet the Secretary may authorize sale of the old presses to manufacturers and at the same time purchase a new press paying for it out of the appropriation available. (1877) 15 Op. Atty. Gen. 322.

§ 626. Statements of money received from proceeds of public property or other sources, and of payments therefrom. The Secretary of the Treasury shall require, and it shall be the duty of the head of each executive department or other Government establishment to furnish him, within thirty days after the close of each fiscal year, a statement of all money arising from proceeds of public property of any kind or from any source other than the Postal Service, received by said head of department or other Government establishment during the previous fiscal year for or on account of the public service, or in any other manner in the discharge of his official duties other than as salary or compensation, which was not paid into the general Treasury of the United States, together with a detailed account of all payments, if any, made from such funds during such year: *Provided, however,* That this shall not apply to the Quartermaster Corps, as successor to the Subsistence Department. All such statements, together with a similar statement applying to the Treasury Department, shall be transmitted by the Secretary of the Treasury to Congress at the beginning of each regular session. (June 30, 1906, c. 3914, § 5, 34 Stat. 763; Aug. 24, 1912, c. 391, §§ 1, 3, 37 Stat. 579, 591.)

Editorial comment.—This section is probably affected by the powers conferred on the Bureau of the Budget. (See chapter 1 of this title.)

Historical Note

This section, except the proviso, is from Act June 30, 1906, c. 3914, § 5, cited to the text. The proviso is from Act 24, 1912, c. 391, § 1, also cited to the text, which provided that section 5 of the Act of 1906 should not apply to the Subsistence Department. By section 3 of that Act, likewise cited to the text, the Subsistence Department and other Departments were consolidated and designated the Quartermaster Corps.

Notes of Decisions

1. Commissary stores.—This applies to sales and purchases from the proceeds of sales of commissary stores, under section 487 of this title and section 1196 of Title 10, Army. (1906) 26 Op. Atty. Gen. 38.

§ 627. Construction of appropriation Acts. No Act of Congress shall be construed to make an appropriation out of the Treasury of the United States, or to authorize the execution of a contract involving the payment of money in excess of appropriations made by law, unless such Act shall in specific terms declare an appropriation to be made or that a contract may be executed. (June 30, 1906, c. 3914, § 9, 34 Stat. 764.)

Historical Note

This section was part of the sundry civil appropriation act for the fiscal year 1906, cited to the text.

It superseded a previous similar restriction on the construction of acts as making appropriations of Act July 1, 1902, c. 1351, 32 Stat. 560.

Cross-References

The style and title of acts making appropriations are prescribed by section 25 of Title 1, General Provisions.

Notes of Decisions

1. Construction of appropriation Acts in general.—Under the terms of sundry civil appropriation acts, which simply provided a gross sum for contingent expenses of "the several land offices," it was held the duty of the secretary of the interior to make an equal distribution of the sum among the several land offices; having regard, in the matter of rent, for those offices not accommodated in government buildings. U. S. v. Swiggett (Mont. 1897) 83 F. 97, 27 C. C. A. 465.

The presumption is that provisions of a general character in an appropriation act are limited to the subject-matter of the act, and are not permanent regulations, unless clearly so provided. U. S. v. Jarvis (D. C. Me. 1846) Fed. Cas. No. 15,-468.

The intention of Congress must govern when there is a conflict between the Revised Statutes and subsequent appropriation acts. Belknap v. U. S. (1889) 24 Ct. Cl. 433, affirmed (1893) 14 S. Ct. 183, 150 U. S. 588, 37 L. Ed. 1191.

An appropriation act may withhold the moneys appropriated from past transactions, but that will not make the statute retroactive. Gardner v. U. S. (1889) 25 Ct. Cl. 24.

General legislation in an appropriation act, beginning with the word "hereafter," takes effect at the date of the act, and not at the beginning of the ensuing fiscal year. Chance v. The U. S. (1903) 38 Ct. Cl. 75.

A proviso to an appropriation which will permanently affect the pay of officers irrespective of the appropriation to which it is attached is not properly a proviso, but has simply the meaning of the conjunction "and." Carden v. U. S. (1910) 45 Ct. Cl. 171.

Where an act of Congress, in making appropriation for the payment of a claim, incorrectly states an initial letter in the name of the claimant, advised that the claim may be paid provided its identity with that provided for in the act be clearly established. (1884) 18 Op. Atty. Gen. 50.

The appropriation of specific funds "to be immediately available" ordinarily imposes the duty of expending them for the purposes named in the act. (1896) 21 Op. Atty. Gen. 420.

The general public system for the appropriation and disbursement of public moneys is permanent, and unless charges are within the objects for which an appropriation is made they cannot be applied to that appropriation. (1911) 28 Op. Atty. Gen. 634.

2. Construction as making appropriation or authorizing expenditure.—A statute should not be construed as making an appropriation, or authorizing the expenditure of money, unless the language is sufficiently explicit to clearly justify it; authority for the use of the public money cannot rise by inference without very clear terms requiring it. (1885) 18 Op. Atty. Gen. 176.

Act March 4, 1913, § 14, creating commission to direct construction of amphitheater at Arlington National Cemetery, Va., did not, in view of this section and section 263 of Title 40, Public Buildings, Property and Works, limiting certain acts to authorization and contract purposes, authorize present expenditures, but it did authorize making contracts. (1913) 30 Op. Atty. Gen. 147.

3. Specific and general appropriations.—The rule that a specific appropriation

is exclusive, and that another general appropriation is not available for the same purpose, is a rule of administration firmly established by the accounting branch of the government, and is not a statutory limitation. This rule, while a proper one, has obvious exceptions and limitations, and must be applied reasonably. (1906) 26 Op. Atty. Gen. 81.

The general rule of law is that, when Congress makes a specific appropriation for any particular purpose, this is construed as meaning that no more shall be expended for that purpose than is thus appropriated; and if a general appropriation applicable to the same purpose, together with other purposes of the like class, would otherwise be available to meet the same expenditure, the specific appropriation operates pro tanto as a repeal or suppression of the general, and renders its use for the specific purpose illegal. (1908) 27 Op. Atty. Gen. 31.

4. Permanent appropriations.—No clause, phrase, or section of an appropriation act ought to be construed as permanent legislation unless such words are used therein as make that purpose clear. (1908) 27 Op. Atty. Gen. 108.

The presumption against general and permanent enactments in appropriation acts is against permanence. (1909) 27 Op. Atty. Gen. 288, 289.

5. Appropriation distinguished from use of property.—A distinction exists between the appropriation of moneys by Congress and use of government property incidental to administration under an adequate grant of authority. U. S. v. Mammoth Oil Co. (C. C. A. Wyo. 1926) 14 F.(2d) 705, certiorari granted (1927) 47 S. Ct. 332, 273 U. S. 686, 71 L. Ed. —.

6. Contracts.—The public printer cannot lawfully enter into a contract for the purchase of all the paper required in the printing of postal cards for a period of four years. (1909) 27 Op. Atty. Gen. 584.

Though the government may properly charge against an appropriation for harbor improvement the reasonable cost of superintendence thereof, it cannot deduct from the amount of such appropriation the cost of superintendence incurred after the appropriation had been exhausted through a mistake of its inspector, which resulted in the contractor's doing work for which he could recover no compensation. Sutton v. U. S. (1921) 41 S. Ct. 563, 256 U. S. 575, 65 L. Ed. 1099, 19 A. L. R. 403, modifying (1920) 55 Ct. Cl. 193.

Act June 25, 1910, Act Feb. 27, 1911, and Act July 25, 1912, making appropriations for improving a harbor channel and for completing the improvement, did not authorize the Secretary of War to contract for the completion of the improvement at a cost exceeding the amount appropriated, especially in view of this section. Id.

Sections 11 and 12 of Title 41, Public Contracts, and this section prohibit the making of a contract with the United States for work in excess of a specific appropriation therefor by Congress, and where a contractor enters into an agreement for such work he must be held to have notice of the law, especially where the contract itself provides that the work shall be done "within the limits of available funds." Id.

The appropriation made by Act Oct. 2, 1914, for the further prosecution of river and harbor improvements, did not authorize the application of the amount so appropriated to work theretofore done by a contractor, and where a portion had been paid from such appropriation to a contractor for previous work, the United States could deduct a similar amount for work done by the same contractor on another improvement. Id.

7. Salary and compensation.—See notes under section 665 of this title.

§ 628. Application of moneys appropriated. Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others. (R. S. § 3678.)

Historical Note

This section of the Revised Statutes was derived from Act March 3, 1809, c. 28, § 1, 2 Stat. 535; Act Feb. 12, 1868, c. 8, § 2, 15 Stat. 36.

A provision of the Indian Appropriation Act of June 7, 1897, c. 3, § 11, 30 Stat. 93, providing that "where funds appropriated in specific terms for a particular object are not sufficient for the object named, any other appropriation, general in its terms, which otherwise would be available may, in the discretion of the Secretary of the Interior, be used to accomplish the object for which the specific appropriation was made," was repealed by the Act of March 3, 1911, c. 210, § 1, 36 Stat. 1062.

A provision that expenses of maintaining and repairing light vessels might be paid from the surplus of the appropriation for the work on which the vessels were employed, by Act March 3, 1879, c. 182, 20 Stat. 379, was repealed by Act June 25, 1910, c. 384, § 1, 36 Stat. 755.

The Secretary of the Interior was authorized to use general appropriations in case the specific one was insufficient by Act June 7, 1897, c. 3, § 11, 30 Stat. 93, which was repealed by Act March 3, 1911, c. 210, § 1, 36 Stat. 1062.

Recent sundry civil appropriation acts have provided that no part of the appropriation for suppressing counterfeiting, etc., should be used in paying the expenses of witnesses, which are to be paid from the appropriation for "Fees of witnesses, United States courts." The provisions for the fiscal year 1928 were by Act Jan. 26, 1927, c. 58, Title I, 44 Stat. 1037.

Cross-References

No part of the moneys appropriated for the support of the coinage mints and assay-office at New York can be used to defray the expenses of parting and refining bullion, by section 361 of this title.

Appropriations for supplies to the Indians are to be so expended as to prevent a deficiency, and so as to be within the limit of the appropriation, by section 135 of Title 25, Indians.

Funds appropriated for the National Home for Disabled Volunteer Soldiers may, in case such Home is destroyed, or rendered unfit for habitation, be used to transfer its inmates to another Home, by section 133 of Title 24, Hospitals, Asylums, and Cemeteries.

Appropriations for the Coast and Geodetic Survey may be used for the purchase of provisions, etc., and supplies to be sold to employés, of said survey, and the appropriation reimbursed, by section 661 of this title.

No part of the appropriations for the Quartermaster Corps is to be used in payment of extra duty pay for Army service men in the Quartermaster's Department at West Point, by section 652 of this title.

No part of the appropriations for the Ordnance Department is to be used in payment of freight on ordnance, etc., issued by said department, by section 657 of this title.

Appropriations for the Ordnance Department are applicable to defray expenses in connection with the procurement by it of stores for other executive departments or bureaus, by section 660 of this title.

Certain appropriations for ordnance stores, ammunition, etc., for the Army, are made available for two years, by section 655 of this title.

Certain books and periodicals needed by the scientific divisions of the Geological Survey may be paid for out of appropriations for said survey, by section 36 of Title 43, Public Lands.

Appropriations for supplies for the United States courts and judicial officers are to be expended only for supplies purchased by the Department of Justice for distribution, by section 663 of this title.

Restrictions on the use of appropriations made for printing and binding for illustrations, etc., are contained in section 118 of Title 44, Public Printing and Documents.

The appropriations to which the cost of printing and binding, etc., for the Executive Departments, bureaus, etc., is to be charged, are prescribed, and the application of appropriations to the printing and binding, etc., of publications required by law, for which estimates have been furnished as required, is directed by section 214 of Title 44.

Restrictions on the use, for services in the Government Printing Office, of funds other than those appropriated therefor for which estimates have been furnished as required, are imposed by section 37 of Title 44, Public Printing and Documents.

The surplus of appropriations for subsistence of Indian tribes, may be used to supply any subsistence deficiency, and appropriations for certain purposes provided for by treaty stipulation may be diverted to other uses for the benefit of the tribes, by sections 139 and 140 of Title 25, Indians.

The use of public money or of any appropriation for compensation or expenses of any commission, etc., unless authorized by law, is forbidden, by section 673 of this title.

Lump sum appropriations are not to be available for the payment of increased salaries by section 629 of this title.

Notes of Decisions

1. Scope of section.—This section is applicable to Commissioners, and they and their bondsmen are liable to suit on their bond for the recovery of balances found due from them on settlement of their accounts. (1883) 17 Op. Atty. Gen. 574.

2. Statutory restrictions.—The statute restricts in every possible way the expenditures, expenses, and liabilities of the government, so far as executive officers are concerned, to the specific appropriation for each fiscal year. Wilder v. U. S. (1880) 16 Ct. Cl. 528.

3. Effect of appropriation.—An appropriation of a given amount of money for a specified purpose is not a designation of a specific parcel of money, but is simply an authority to apply that amount of money to that purpose. Hukill v. U. S. (1880) 16 Ct. Cl. 562.

Every appropriation for the payment of a particular demand or class of demands involves and includes a congressional recognition of their legality and justice, and is equivalent to a mandate to the officers of the Treasury for the payment thereof. Id.

4. Use for other purpose.—If appropriations are not used for the particular work designated by Congress they cannot be used for any other purpose. (1896) 21 Op. Atty. Gen. 414.

In (1886) 18 Op. Atty. Gen. 463, the opinion was expressed that application of the fund provided for the Mississippi river improvement to the payment of the salaries and traveling expenses of members of the Mississippi river commission, such members having been appointed from civil life, and Congress not having made any specific appropriation for such salaries and traveling expenses, would be inconsistent with this section.

It is competent for a head of a department to alter the disposition among the various bureaus and offices of his department, of the clerks allowed by law, as he may find it necessary and proper to do, taking care that in no case shall any such clerk be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such payment is specifically provided for in the law granting the appropriation. (1894) 20 Op. Atty. Gen. 750.

5. Duties of disbursing officers.—Naval pay officers are only required to see that roll on its face discloses an object for which an appropriation may be made. (1915) 30 Op. Atty. Gen. 376.

6. Recovery of money paid.—Money paid by authority of a specific appropriation of Congress cannot be recovered back. City of Louisville v. U. S. (1895) 31 Ct. Cl. 1, affirmed (1898) 18 S. Ct. 358, 169 U. S. 249, 42 L. Ed. 735.

7. Salary and compensation.—See Parshall v. U. S. (Mo. 1906) 147 F. 433, 77 C. C. A. 457.

Appointment as special assistant to the Attorney General to investigate alleged crimes arising out of transactions affecting the operations of the Emergency Fleet Corporation, of one who was then special counsel to the United States Shipping Board Emergency Fleet Corporation, and who was then receiving compensation as such, with direction to serve as special assistant attorney without other compensation than he was then receiving, held not invalid, as violating this section. U. S. v. Morse (D. C. N. Y. 1922) 292 F. 273.

8. Reimbursement between departments.—Where one department receives from another department supplies which are within the scope of appropriations belonging to each, a reimbursement of the appropriation of the one from the appropriation of the other of the cost of such supplies is not a violation of this section. (1882) 17 Op. Atty. Gen. 480.

9. Attorney's fees.—Funds in hands of personal representative of deceased claimant, in favor of whose estate an appropriation has been made by Act Cong. March 4, 1915, or in hands of legatees under his will, cannot be charged with payment of the excess of attorney's fee above the amount allowed by the act. Black v. Crouch (1919) 100 S. E. 749, 85 W. Va. 22.

§ 629. Lump-sum appropriations; not available for increased salaries. Except as otherwise provided by law, no part of any money appropriated in lump sum shall be available for the payment of personal services at a rate of compensation in excess of that paid for the same or similar services during the preceding fiscal year; nor shall any person employed at a specific salary be transferred and paid from a lump-sum appropriation a rate of compensation greater than such specific salary, and the heads of departments shall cause this provision to be enforced: *Provided*, That this section shall not apply to mechanics, artisans, their helpers and assistants, laborers, or any other employees whose duties are of similar character and required in carrying on the various manufacturing or constructing operations of the Government. (Aug. 26, 1912, c. 408, § 7, 37 Stat. 626; Mar. 4, 1913, c. 142, § 4, 37 Stat. 790.)

Historical Note

This is Act Aug. 26, 1912, c. 408, § 7, as amended by Act March 4, 1913, c. 142, § 4, cited to the text.

The amendment substituted the words "during the preceding fiscal year" for the words "during the fiscal year 1912," and added the proviso.

Cross-References

This section is not to apply to the payment from lump sum appropriations for the Department of Agriculture, for personal services of those engaged in strictly scientific or technical work, by section 630 of this title.

§ 630. Same; salaries of scientific and technical employees of Department of Agriculture. Section 629 of this title shall not apply to the payment, out of moneys appropriated in lump sum for the Department of Agriculture, for personal services of employees engaged in strictly scientific or technical work: *Provided,* That nothing contained herein shall be construed to authorize the transfer of any person employed at a specific salary and the payment of compensation from lump-sum appropriations at a rate greater than said specific salary. (Mar. 4, 1913, c. 145, 37 Stat. 854.)

Historical Note

This was a provision of the agricultural appropriation act for the fiscal year 1914, cited to the text.

§ 631. Drafts for War and Navy Departments. All moneys appropriated for the use of the War and Navy Departments shall be drawn from the Treasury, by warrants of the Secretary of the Treasury, upon the requisitions of the Secretaries of those departments, respectively, countersigned in the General Accounting Office, and registered. (R. S. § 3673; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—It has been suggested that the words "except as provided in section 76 of this title" should be inserted in this section.

Historical Note

This is R. S. § 3673, which was derived from Act March 3, 1817, c. 45, §§ 5, 9, 3 Stat. 367; Act May 7, 1822, c. 90, § 3, 3 Stat. 689.

Upon incorporation into the Code the words "countersigned by the Second Comptroller of the Treasury, and registered by the proper Auditor," were changed to conform to section 44 of this title.

Cross-References

Provisions authorizing the Secretary of the Navy to issue requisitions for advances are contained in sections 539 to 541 of this title.

General provisions requiring requisitions for advances to be sent to the General Accounting Office for action, and regulating the issue of warrants for payment of money, are made by section 76 of this title.

Notes of Decisions

1. Former practice.—This act changes the former practice of placing the moneys appropriated for the war and navy departments in the treasury to the credit of the respective secretaries. Brashear v. Mason (Dist. Col. 1848) 6 How. 92, 101, 12 L. Ed. 357.

2. "Warrant" and "requisition" synonymous.—The words "warrant" and "requisition" are sometimes used with the same meaning. For example, the "warrants drawn by the secretaries" of the War and Navy Departments, signify precisely the same thing as the "requisitions of the secretaries of those departments," mentioned in this section. (1877) 15 Op. Atty. Gen. 192.

§ 632. Restriction on payments on account of Postal Service. Payments of money out of the Treasury on account of the Postal Service shall be in pursuance of appropriations made by law, by warrants of the Postmaster General, registered and countersigned in the General Accounting Office, and expressing on their face the appropriation to which they should be charged. (R. S. § 3674; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This is R. S. § 3674 (Act June 8, 1872, c. 335, § 47, 17 Stat. 291) with the words "Auditor for the Post Office Department" changed to "General Accounting Office" to conform to section 44 of this title.

Cross-References

The Postmaster-General is authorized to designate any officer or certain employés to sign warrants, etc., in his stead by section 382 of Title 5, Executive Departments and Government Officers and Employees.

§ 633. Charge against fund "Transportation and recruiting," for transportation of men discharged. The transportation to their homes, if residents of the United States, of enlisted men and apprentices of the Navy discharged on medical survey; and the transportation to the place of enlistment, if residents of the United States, of such enlisted men and apprentices discharged on account of expiration of enlistment, shall be chargeable to the appropriation "Transportation and recruiting." (Mar. 3, 1901, c. 831, § 1, 31 Stat. 1030; Feb. 11, 1925, c. 209, 43 Stat. 864.)

Historical Note

This was a proviso annexed to an appropriation for transportation, recruiting, etc., in the deficiency appropriation act of March 3, 1901, cited to the text.

Upon incorporation into the Code, the words "Transportation, recruiting and contingent" were changed to "Transportation and recruiting" to conform to the designation of the appropriation in Act Feb. 11, 1925, c. 209, cited to the text.

§ 634. Appropriations for Navy controlled by Secretary; for bureaus kept separately. All appropriations for specific, general, and contingent expenses of the Navy Department shall be under the control and expended by the direction of the Secretary of the Navy, and the appropriation for each bureau shall be kept separate in the Treasury. (R. S. § 3676.)

Historical Note

This section of the Revised Statutes was derived from Act July 5, 1862, c. 134, § 5. 12 Stat. 511.

Cross-References

Provisions prescribing the manner of using the clothing and small-stores fund are made by section 640 of this title.

Provisions describing the manner of purchasing and issuing naval supplies are made by section 641 of this title.

The General Accounting Office is authorized to credit appropriation "Pay miscellaneous" with receipts for interest on the account of the Navy Department with the London fiscal agents, premiums arising from sales of bills of exchange and from appreciation in the value of foreign coin, by section 639 of this title.

Provisions concerning the naval supply account are contained in section 642 of this title.

Notes of Decisions

1. Employment of special counsel.—Special counsel may be employed by the Attorney General, at the request of the Secretary of the Navy, to assist the judge-advocate in a trial by court-martial; the compensation of such counsel to be paid from the appropriation for the contingent expenses of the navy. (1885) 18 Op. Atty. Gen. 135.

2. Transfers of appropriations under former laws.—Since the passage of Act Aug. 31, 1842, c. 286 (incorporated in part in sections 429 and 430 of Title 5, Executive Departments and Government Officers and Employees), the President has no power to direct transfers in the Navy Department of moneys appropriated for one particular branch to the account of another branch of expenditure. (1843) 4 Op. Atty. Gen. 266.

Under Act February 23, 1844 (chapter 3), see (1844) 4 Op. Atty. Gen. 310; (1845) 4 Op. Atty. Gen. 428.

§ 635. Appropriations for Bureau of Yards and Docks available until expended. Appropriations made under the Bureau of Yards and

Docks for public works, exclusive of repairs and preservation, shall remain available until expended. (July 12, 1921, c. 44, § 3, 42 Stat. 139.)

Historical Note

This is from the Naval service appropriation act for the fiscal year 1922, cited to the text.

§ 636. Restrictions upon use of appropriations for "Increase of Navy" under Bureau of Ordnance. No part of appropriations made for "Increase of the Navy" under the Bureau of Ordnance and no part of allotments of appropriations made to said bureau shall be available for the payment for services or materials used in the construction of any shop, building, living quarters, or other structures, except such temporary structures costing not in excess of $5,000 each as may be incident to current work of said bureau, or for additions and betterments to any existing shore station facilities unless the appropriation shall in terms specifically authorize such construction or additions and betterments: *Provided,* That nothing herein shall be construed as interfering in any way with any existing contract or any work in progress on July 12, 1921. (July 12, 1921, c. 44, § 1, 42 Stat. 128.)

Historical Note

This is from the Naval service appropriation act for the fiscal year 1922, cited to the text.

§ 637. Contingent expenses not payable from appropriations for Naval Establishment. It shall not be lawful to expend, for any of the offices or bureaus of the Navy Department at Washington, any sum out of appropriations made for the Naval Establishment for stationery, furniture, newspapers, plans, drawings, drawing material, horses and wagons to be used only for official purposes, including rental of stable, purchase, maintenance, repair, operation or exchange of horse-drawn passenger-carrying vehicles, automobile mail wagon, including exchange of same, street car tickets, freight, expressage, postage, typewriters, computing machines, and other absolutely necessary expenses of the Navy Department and its various bureaus and offices. (June 22, 1906, c. 3514, § 1, 34 Stat. 427; Mar. 3, 1917, c. 163, § 1, 39 Stat. 1102.)

Historical Note

These were provisions under the heading "Contingent expenses, Navy Department," of the legislative, executive, and judicial appropriation act of June 22, 1906, cited to the text.

The use of the word "hereafter" in connection with the restriction on the use of appropriations for the naval establishment indicated an intention to make that provision permanent. Subsequent acts down to Act March 1, 1919, c. 86, § 1, 40 Stat. 1213, made an appropriation for like purposes, and added a like restriction, omitting the word "hereafter."

The enumeration of articles appropriated for varied slightly from year to year, and the enumeration contained in Act March 3, 1917, c. 163, § 1, cited to the text, has apparently been substituted for that contained in the Act of 1906.

Notes of Decisions

1. Expenditure of contingent fund.—The Secretary of the Navy has the contingent fund of the Department entirely at his disposal from which he may draw for the purpose of compensating any services rendered in any of the relations of his Department which are of a contingent character. (1819) 1 Op. Atty. Gen. 302.

§ 638. Restrictions upon appropriations for ordnance or ordnance material or material purchased therewith. No money appropriated for ordnance or ordnance material or material purchased therewith for the Navy shall be used for any other purpose than that for which the appropriation was made: *Provided,* That nothing herein shall be construed as preventing the allocation of armor, armament, ammunition, ordnance material, equipment, and accessories to ships according to the requirements of the naval service. (July 1, 1918, c. 114, 40 Stat. 721; July 12, 1921, c. 44, § 1, 42 Stat. 128.)

Historical Note

This is from the Naval service appropriation act of July 12, 1921, cited to the text. It was evidently regarded as superseding Act July 1, 1918, c. 114, 40 Stat. 721, cited to the text, which provided that ordnance materials procured under the various ordnance appropriations should be available for issue to meet the general needs of the naval service, under the appropriation from which procured.

§ 639. Credit to appropriation "Pay miscellaneous" of premiums from sale of exchange. The General Accounting Office may credit appropriation "Pay miscellaneous," with all receipts for interest on the account of the Navy Department with the London fiscal agents, premiums arising from sales of bills of exchange, and from any appreciation in the value of foreign coin. (Mar. 3, 1893, c. 212, 27 Stat. 716; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This was a provision following an appropriation for "Pay miscellaneous" in the naval appropriation act of March 3, 1893, cited to the text.

Upon incorporation into the Code, the words "General Accounting Office" were substituted for "accounting officers of the Treasury" to conform to section 44 of this title.

§ 640. Clothing and small-stores fund. The value of issues of clothing and small stores by the Bureau of Supplies and Accounts in the Department of the Navy shall be credited to a consolidated fund to be designated as the "clothing and small-stores fund," in the same manner as the value of the issues of clothing was credited to the "clothing fund" prior to February 14, 1879, and as the value of issues of small stores was credited to the "small-stores fund" prior to June 30, 1890; the resources of the fund to be used in the purchase of supplies of clothing and small stores for issue. (Feb. 14, 1879, c. 68, 20 Stat. 288; June 30, 1890, c. 640, 26 Stat. 197; July 19, 1892, c. 206, § 1, 27 Stat. 243, 245;* Mar. 3, 1893,† c. 1010, 32 Stat. 1191; Mar. 20, 1922, c. 104, 42 Stat. 451.)

* "245" should be omitted.
† "1893" should be "1903."

Historical Note

This section was taken principally from a provision following an appropriation for the Bureau of Provisions and Clothing in the naval appropriation act of Feb. 14, 1879, cited to the text, which provision read as follows: "From and after the first day of April, eighteen hundred and seventy-nine, the value of issues of small-stores shall be credited to a fund to be designated as the 'small-stores fund,' in the same manner as the value of the issues of clothing is now credited to the 'clothing fund'; the resources of the fund to be used hereafter in the purchase of supplies of small-stores for issue."

By Act June 30, 1890, c. 640, cited to the text, the clothing fund and small-stores fund were consolidated and designated the clothing and small-stores fund.

By Act July 19, 1892, c. 206, § 1, cited to the text, the Bureau of Provisions and

Supplies was designated the Bureau of Supplies and Accounts.

By Act March 3, 1903, c. 1010, cited (inaccurately) to the text, $1,000,000 were appropriated and added to the clothing and small-stores fund.

By Act March 20, 1922, c. 104, also cited to the text, provision was made for an increase in the fund to provide for adjustment of accounts of the Naval establishment on the books of the Treasury Department on account of expenditures in excess of the authorized capital of the fund for war purposes; and for a reduction of the authorized capital when such adjustment had been effected.

§ 641. Naval supplies; purchase, and classification and issue, for Navy, and not for bureaus. All supplies purchased with moneys appropriated for any branch of the Naval Establishment shall be deemed purchased for the Navy and not for any bureau thereof, and shall be arranged, classified, catalogued, and issued for consumption or use, under such regulations as the Secretary may prescribe, without regard to the bureau for which they were purchased. (June 30, 1890, c. 640, 26 Stat. 205; Mar. 2, 1891, c. 494, 26 Stat. 807.)

Historical Note

The language of this section is taken largely from Act June 30, 1890, cited to the text, which, however, referred only to supplies purchased with moneys appropriated by that act.

Act March 2, 1891, c. 494, cited to the text, provided that supplies thereafter purchased with moneys appropriated for any branch of the naval establishment should be purchased, classified, etc., subject to the provisions of the Act of 1890.

Notes of Decisions

1. Repeal of statutes.—The provisions in this section, with regard to "arranging, classifying, consolidating, and cataloguing supplies for the navy," is not to be considered as repealing any of the previous acts regarding the purchase and disposition of naval supplies. (1911) 28 Op. Atty. Gen. 634.

§ 642. "Naval Supply Account"; purchases charged to; payments from "General Account of Advances," returned. The Naval Supply Account for the Naval Establishment, under the Bureau of Supplies and Accounts, shall govern the charging, crediting, receipt, purchase, transfer, manufacture, repair, issue, and consumption of all stores for the Naval Establishment, excepting such material as provisions, clothing and small stores, medical stores, and such other materials as the Secretary of the Navy may designate, and which may be purchased by specific appropriations or transferred to specific appropriations before such materials are issued for use or consumption; the said charge, however, to any particular appropriation shall be limited to the amount appropriated therefor. The appraised value of all stores, equipage, and supplies turned in from ships, and ships' equipage turned in from yards or stations (except salvage), shall be credited to the current appropriations concerned, and the amounts so credited shall be available for expenditures for the same purposes as the appropriations credited. (June 25, 1910, c. 385, 36 Stat. 792; Mar. 4, 1911, c. 239, 36 Stat. 1279; June 30, 1914, c. 130, 38 Stat. 405.)

Historical Note

The first sentence of this section is a combination of provisions contained in Act June 25, 1910, c. 385, and Act March 4, 1911, c. 239, cited to the text. The provisions of the Act of 1910 applied only during certain fiscal years, but were adopted in part, by reference, by the Act of 1911.

The second sentence is based on Act June 30, 1914, c. 130, also cited to the text.

Provisions of the Act of 1911, omitted here, abolished the permanent Naval Supply Fund created by Act March 3, 1893, c. 212, 27 Stat. 723, as modified by Act June 10, 1896, c. 399, 29 Stat. 370, and Act March

3, 1897, c. 386, 29 Stat. 658, and increased by Act Jan. 5, 1899, c. 41, 30 Stat. 781, and Feb. 14, 1902, c. 17, 32 Stat. 17, and provided for the disposition of such fund. A further provision limited the amount expended under General Account of Advances for the purchase and manufacture of stores and materials for the naval establishment to the amount available for such purposes. It is not clear why this last-mentioned provision was omitted.

Notes of Decisions

1. **Appropriations and charges.**—The increase of the permanent naval supply fund beyond the statutory limit, by adding to it all the stock technically known as "common general stock," held without warrant of law. (1911) 28 Op. Atty. Gen. 634.

The expense of handling stores purchased under the naval supply fund, being specifically provided for in the annual naval appropriation acts, could not be legally charged to the working appropriations. Id.

Articles of equipage of ships, which in prior fiscal years had been purchased and paid for under the appropriation "equipment of vessels," and which had been turned into store from ships going out of commission, should be again charged against the annual appropriation for "equipment of vessels" when they are reissued to the vessels upon their going into commission. (1912) 29 Op. Atty. Gen. 344.

2. **"Materials."**—The word "materials" is intended to include articles forming part of a ship's equipage. (1912) 29 Op. Atty. Gen. 344.

§ 643. Permanent special working fund; charges against and credits to. The permanent special working fund of the Navy shall be charged with the net proceeds of all sales of surplus and condemned stores; with refunds to bidders at sales and to special depositors; and with all labor, overhead, material, and services incident to work done not chargeable to naval appropriations; and shall be credited with all funds received as payment or advances for surplus stores, for condemned stores, and for all expenses incident to work not chargeable to naval appropriations. (May 28, 1924, c. 203, 43 Stat. 195.)

Historical Note

This is from the Navy Department and Naval Service appropriation act for the year 1925, cited to the text.

A provision of the original text, omitted here, directed the transfer, from the naval supply account fund, of an amount not exceeding $100,000 for the establishment of a permanent special working fund.

§ 644. Naval Supply Account fund; charges against. There shall be a naval supply account fund, which shall be charged with the cost of all stores procured for and credited with the value of all issues or sales made from the naval supply account. Deficiencies under appropriations for the Naval Establishment for the fiscal year 1920 and prior years shall be charged to this fund, to which shall be transferred the unexpended balances of annual appropriations for the Naval Establishment for the fiscal years 1919 and 1920. (Mar. 1, 1921, c. 89, § 1, 41 Stat. 1169.)

Historical Note

This is from the First Deficiency Act for the fiscal year 1921, cited to the text.

Some additional provisions of the original text concerning transfers to the fund created, were evidently omitted as temporary and executed.

§ 645. Prices of material expended from naval supply account; issue of certain material at reduced prices. The prices at which material is to be expended from the naval supply account shall be fixed by the Paymaster General of the Navy, subject to the approval

of the Secretary of the Navy, and materials purchased during the war shall be issued at reduced prices in all cases appropriate, such differences in values and losses to be charged to the respective funds; and no charges on this account shall be made to naval appropriations. (Mar. 1, 1921, c. 89, § 1, 41 Stat. 1170.)

Historical Note

This was a provision of the First Deficiency Act for the fiscal year 1921, cited to the text.

§ 646. Overhead charges charged against appropriations. There shall be charged against the several appropriations for the support of the Naval Establishment the overhead charges incident to upkeep and to industrial work at navy yards and stations. The total sum so charged shall be distributed in accordance with the work done in the various yards and stations in order that the cost of work may be determined. (June 30, 1914, c. 130, 38 Stat. 413.)

Historical Note

This was a provision of the naval service appropriation act for the fiscal year 1915, cited to the text.

§ 647. Direct and indirect charges included in cost of work under naval appropriations. In fixing the cost of work under the various naval appropriations, the direct and indirect charges incident thereto shall be included in such cost. The Bureau of Supplies and Accounts shall keep the money accounts of the Naval Establishment in such manner as to show such charges, and shall report the same annually for the information of Congress. (Mar. 4, 1911, c. 239, 36 Stat. 1267.)

Historical Note

These provisions were provisos, annexed to the appropriation under the head "Contingent, Navy," in the naval appropriation act for the fiscal year 1912, cited to the text.

Somewhat similar provisions, without the word "hereafter," were contained in the naval appropriation act for the preceding year, Act June 24, 1910, c. 378, 36 Stat. 607.

Further provisions of the naval appropriation act for the fiscal year 1912, some of which were repeated from the similar act for the preceding year, applied in terms only to "any sum hereby appropriated, any sum appropriated by this act," etc. Act March 4, 1911, c. 239, 36 Stat. 1288, 1289.

§ 648. Equipment outfits charged against appropriation "Increase of the Navy, construction and machinery." Equipment outfits for the Navy shall be charged to appropriation "Increase of the Navy, construction and machinery." (Mar. 3, 1915, c. 83, 38 Stat. 952.)

Historical Note

This section and section 649 of this title were provisions of the naval service appropriation act for the fiscal year 1916, cited to the text.

§ 649. Expenses of certain naval auxiliaries charged against appropriation "Fuel and transportation." When the lowest obtainable cost of transportation of fuel between the Atlantic and Pacific coasts of the United States by merchant carriers is considered excessive, the appropriation "Fuel and transportation" may be charged with the expense of pay, transportation, shipping, and subsistence of civilian officers and crews, and such other incidental expenses as can

not be paid from other appropriations, of naval auxiliaries engaged in the transportation of fuel: *Provided,* That the appropriation "Maintenance of naval auxiliaries" is insufficient therefor. (Mar. 3, 1915, c. 83, 38 Stat. 944.)

Historical Note

See note to section 648 of this title.

§ 650. Charge against fund "Pay of the Army" of detained pay. Sums known as detained pay, which have already been or may hereafter be withheld from the monthly pay of enlisted men of the Army in obedience to court-martial sentences, shall, when repaid, become a charge against the fund "Pay of the Army" for the year in which said enlisted men have been or may be discharged. (Aug. 6, 1894, c. 228, 28 Stat. 236.)

Historical Note

This was a proviso annexed to an appropriation for detained pay, etc., in the army appropriation act for the fiscal year 1895, cited to the text.

§ 651. Disbursements; for Signal Service. All appropriations made for the support of the Signal Service or Corps and for the maintenance and repair of military telegraph lines, shall be disbursed under the direction of the Secretary of War, by the regularly bonded officer who is or may be detailed by the Secretary of War for duty as disbursing officer of the Signal Service. (Aug. 30, 1890, c. 837, § 1, 26 Stat. 399; Feb. 24, 1891, c. 284, 26 Stat. 779.)

Historical Note

This is a combination of provisos annexed to appropriations in the acts cited to the text.

A further proviso in the Act of Aug. 30, 1899, that all accounts of such disbursements should be audited and adjusted by the Third Auditor and Second Comptroller of the Treasury, was superseded by the provisions changing the designation and duties of the officers and the system of accounting in the Treasury of the Dockery Act of July 31, 1894, c. 174, §§ 3–12, 28 Stat. 162.

Previous provisions of appropriation acts, that appropriations for the Signal Service should be expended under the direction of the Secretary of War, Act Aug. 7, 1882, c. 433, 22 Stat. 319, and that no money should be paid out of the appropriations for the Army, other than the pay of officers, for service therein, except sums specifically appropriated therefor, Act March 3, 1885, c. 339, 23 Stat. 356, may be regarded as superseded by the provisions of Act Oct. 1, 1890, c. 1266, 26 Stat. 653. (See chapter 9 of Title 15, Commerce and Trade.)

§ 652. Appropriations for Quartermaster Corps; no payment of extra-duty pay at West Point. No part of the moneys appropriated for use of the Quartermaster Corps shall be used in payment of extra-duty pay for the Army service men in the Quartermaster's Department at West Point. (Mar. 2, 1907, c. 2511, 34 Stat. 1167; Aug. 24, 1912, c. 391, § 3, 37 Stat. 591.)

Historical Note

This was a proviso annexed to an appropriation for incidental expenses of the Quartermaster's Department in Act March 2, 1907, cited to the text.

Upon incorporation into the Code, the words "Quartermaster Corps" were evidently substituted for "Quartermaster's Department" to conform to Act Aug. 24, 1912, c. 391, § 3, consolidating the Quartermaster's, Subsistence and Pay Departments of the Army into the Quartermaster Corps.

§ 653. Appropriations for horses; expenditures from. No part of any appropriation shall be expended for defraying expenses of Army

officers, enlisted men, or horses in attending or taking part in horse shows or horse races; but nothing in this section shall be held to apply to the officers, enlisted men, and horses of any troop, battery, or company which shall, by order or permission of the Secretary of War, and within the limits of the United States, attend any horse show or any State, county, or municipal fair, celebration, or exhibition. (Apr. 27, 1914, c. 72, 38 Stat. 351.)

Historical Note

This was a provision of the Army appropriation act for the fiscal year 1915, cited to the text.

§ 654. Appropriations for support of Army; use for supplies for subsequent years. Funds appropriated for support of the Army may be used for the procurement of supplies to be held in store for issue to the Army during subsequent fiscal years. (Mar. 4, 1915, c. 143, § 1, 38 Stat. 1078.)

Historical Note

This was a provision of the Army appropriation act for the fiscal year 1916, cited to the text.

§ 655. Appropriations for ordnance-stores ammunition, available for two years. The appropriations "Ordnance-stores ammunition," "Small-arms target practice," and "Ordnance stores and supplies" shall be available for two years to procure the stores authorized by them. (Mar. 2, 1907, c. 2511, 34 Stat. 1175.)

Historical Note

This was a provision of the Army appropriation act for the fiscal year ending June 30, 1908, cited to the text.

§ 656. Cost of transportation of material charged to appropriations for work in connection with which transportation charges required. The cost of transportation of material in connection with the manufacturing and purchasing activities of the Signal Corps, Ordnance Department, Chemical Warfare Service, Air Service, Medical Department, Engineer Department, and the Coast Artillery Corps, and in connection with the construction and installation of fire-control projects at seacoast fortifications by the Coast Artillery Corps may be charged to the appropriations for the work in connection with which such transportation charges are required; and the Budget estimates for each of such appropriations shall hereafter carry separately the amounts required for such transportation costs. (Mar. 2, 1923, c. 178, Title I, 42 Stat. 1391.)

Historical Note

This is from the War Department appropriation act for the year 1924, cited to the text.

§ 657. Appropriations for Ordnance Department; no expenditure for freight charges. No part of the appropriations made for the Ordnance Department shall be used in payment of freight charges on ordnance or ordnance stores issued by said department. (June 30, 1902, c. 1328, 32 Stat. 520.)

Historical Note

This was a proviso annexed to the appropriation, under the heading "Ordnance Department," for manufacture, etc., of arms, in the Army appropriation act for the fiscal year 1903, cited to the text.

Such proviso re-enacted similar provisos in previous appropriation acts, with the word "hereafter" inserted, making the provision permanent in its operation.

§ 658. **Expenses of manufacturing operations by Chief of Ordnance charged against appropriations therefor.** The Chief of Ordnance, in conducting manufacturing or similar operations, may charge any indirect or general expense for labor or material therefor against any of the appropriations authorizing these operations in such manner as is most economical and efficient, provided that the methods adopted shall show that each of such appropriations bears its ratable share of the total amount of these expenses. (Mar. 2, 1907, c. 2507, 34 Stat. 1062.)

Historical Note

This was a provision of the fortifications appropriation act of March 2, 1907, cited to the text.

§ 659. **Use of material procured under any appropriation by Chief of Ordnance.** The Chief of Ordnance, in conducting manufacturing or similar operations under any particular appropriation may use material procured under any appropriation and replace the same in kind or otherwise: *Provided,* That in doing so the methods shall be such that each appropriation will be charged with the full value of the material used in carrying out its object. (Mar. 4, 1911, c. 242, 36 Stat. 1344.)

Historical Note

This was a provision of the fortifications appropriation act of March 4, 1911, cited to the text.

§ 660. **Expenses of Ordnance Department in procuring stores for other departments or bureaus.** Whenever the Ordnance Department, under existing regulations, procures stores for other executive departments or bureaus, including the Philippine government, its appropriations shall be applicable to defray the necessary expenses in connection with the procurement, subject to reimbursement from time to time, or on completion of the work, from the department or bureau for which the stores were procured. (June 12, 1906, c. 3078, 34 Stat. 258.)

Historical Note

This was a provision of the Army appropriation act for the fiscal year 1907, cited to the text.

§ 661. **Appropriation for Coast and Geodetic Survey; purchases from.** The Secretary of Commerce is authorized to purchase, from the appropriation for the United States Coast and Geodetic Survey, provisions, clothing, and small stores for the enlisted men, and food supplies for field parties working in remote localities, such provisions, clothing, small stores, and food supplies to be sold to the employees of said survey and the appropriation reimbursed. (Mar. 3, 1901, c. 853, § 1, 31 Stat. 1144; Feb. 14, 1903, c. 552, § 4, 32 Stat. 826.)

Historical Note

This was a provision of the sundry civil appropriation act of March 3, 1901, cited to the text.

Upon incorporation into the Code, the words "Secretary of Commerce" were evidently substituted for "Secretary of the Treasury" to conform to Act Feb. 14, 1903, c. 552, § 4, cited to the text. (See section 597 of Title 5, Executive Departments and Government Officers and Employees.)

Appropriations for the Coast and Geodetic Survey in Act Feb. 24, 1927, c. 189, Title III, 44 Stat. 1212, are not available for allowance to civilian or other officers for subsistence while on duty at Washington (except as provided for officers of the field force ordered to Washington for short periods for consultation with the director), except as now provided by law.

§ 662. Appropriations for Bureau of Fisheries; purchases from. The Secretary of Commerce may purchase, to the extent of not to exceed $5,000, from the appropriations for the Bureau of Fisheries, clothing and small stores for the crews of vessels, to be sold to the employees of said service and the appropriations reimbursed. (July 1, 1918, c. 113, § 1, 40 Stat. 694.)

Historical Note

This section was a provision of the sundry civil appropriation act for the fiscal year 1919, cited to the text.

§ 663. Expenditures for supplies for courts and judicial officers. Money appropriated for supplies for the United States courts and judicial officers, shall be expended in payment for such supplies only as shall be purchased, in the discretion of the Attorney General, for delivery at the Department of Justice for distribution. (June 28, 1902, c. 1301, § 1, 32 Stat. 476.)

Historical Note

This was a proviso, contained in the sundry civil appropriation act for the fiscal year 1903, cited to the text.

A similar provision was contained in Act March 3, 1899, c. 424, § 1, 30 Stat. 1116.

Cross-References

Provisions for printing, at the Government Printing Office, blanks and letter heads for use by judges and other officials, upon forms to be prescribed by the Department of Justice, which are to be distributed by it upon requisition, are contained in section 119 of Title 44, Public Printing and Documents.

§ 664. Appropriation for furniture, and repairs for public buildings; certain expenditures prohibited. Expenditures for traveling expenses and subsistence of persons detailed to assist the inspector and assistant inspector of furniture shall not be made from the appropriation for "Furniture and repairs of same, for public buildings." (June 25, 1910, c. 384, § 1, 36 Stat. 710.)

Historical Note

This was a proviso annexed to the appropriation for general expenses of public buildings in the sundry civil appropriation act for the fiscal year 1911, cited to the text.

The original text authorized the expenditures in question to be made from the appropriation referred to during the fiscal year ending June 30, 1910, "and no longer."

§ 665. Expenditures in excess of appropriations; voluntary service forbidden; apportionment of appropriations for contingent expenses or other general purposes. No executive department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress

for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law. Nor shall any department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. All appropriations made for contingent expenses or other general purposes, except appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations are made; and all such apportionments shall be adhered to and shall not be waived or modified except upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment, but this provision shall not apply to the contingent appropriations of the Senate or House of Representatives; and in case said apportionments are waived or modified as herein provided, the same shall be waived or modified in writing by the head of such executive department or other Government establishment having control of the expenditure, and the reasons therefor shall be fully set forth in each particular case and communicated to Congress in connection with estimates for any additional appropriations required on account thereof. Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less than $100 or by imprisonment for not less than one month. (R. S. § 3679; Mar. 3, 1905, c. 1484, § 4, 33 Stat. 1257; Feb. 27, 1906, c. 510, § 3, 34 Stat. 48.)

Historical Note

This is R. S. § 3679 (Act July 12, 1870, c. 251, § 7, 16 Stat. 251) as amended by the Acts of 1905 and 1906 cited to the text.

The Act of 1905 inserted the words "or other obligation," in the first sentence, added the words "unless such contract or obligation is authorized by law," and added the second, third and fourth sentences.

The Act of 1906 substituted the words "No Executive Department or other Government establishment of the United States" for "No Department of the Government" and made some changes of phraseology, especially in reference to waiver or modification of the apportionment.

This section, as amended, superseded a provision similar to that in the second sentence, contained in Act May 1, 1884, c. 37, 23 Stat. 17.

Cross-References

Other provisions prohibiting contracts or purchases on behalf of the United States, unless under an adequate appropriation, are contained in section 11 of Title 41, Public Contracts.

Restrictions on contracts for public buildings or any public improvements, exceeding the amount appropriated for the specific purpose, are made by section 12 of Title 41, Public Contracts.

Restrictions on contracts for the rent of any building in the city of Washington, until an appropriation therefor had been made, are made by section 34 of Title 40, Public Buildings, Property, and Works.

Officers knowingly contracting for the erection, etc., of public buildings or any public improvements for a larger amount than the specific sum appropriated are punishable, by section 184 of Title 18, Criminal Code and Criminal Procedure.

The heads of the Executive Departments are required to apportion contingent funds among the bureaus and offices of the departments by section 669 of this title.

Notes of Decisions

1. Construction and operation in general.
2. —— Effect of other statutes.
3. —— Implied contracts.
4. Restriction to appropriation for fiscal year in general.
5. Obligations beyond amount of appropriation.
6. —— Leases.
7. Obligations incurred after appropriation exhausted.
8. Obligations incurred without appropriation.
9. —— Validation by future appropriation.
10. Knowledge chargeable to contracting party.
11. Employment and compensation in general.
12. Voluntary services.
13. Continuance and expiration of offices.
14. Application of balances.

1. Construction and operation in general.—The words "contingent expenses" mean such incidental, casual expenses as are necessary or appropriate and convenient to the performance of duties required by law of the department or the office for which the appropriation is made. (1879) 16 Op. Atty. Gen. 412.

The object of this section was to prevent executive officers from involving the government in expenditures or liabilities beyond those contemplated and authorized by the law-making power. (1895) 21 Op. Atty. Gen. 248.

In view of this section and sections 11 and 12 of Title 41, Public Contracts, a proposed gift of the Grover Cleveland birthplace at Caldwell, N. J., upon the condition that the property be maintained as a suitable memorial, should not, as a matter of administrative policy, be accepted on behalf of the United States, without the consent of Congress and the President. (1916) 30 Op. Atty. Gen. 527.

2. —— Effect of other statutes.—Section 436 of Title 39, The Postal Service, is not controlled or limited by this section and section 385 of Title 39. Chicago, M. & St. P. R. Co. v. U. S. (1878) 14 Ct. Cl. 125, reversed on other grounds (1881) 104 U. S. 687, 26 L. Ed. 893.

These provisions apply to the public service in general, and must yield to special provisions relating to a particular department. New York Cent. & H. R. R. v. U. S. (1886) 21 Ct. Cl. 468.

This section and section 11 of Title 41, Public Contracts, should be construed together. The latter section authorizes the heads of the War and Navy Departments in the absence of appropriations, to purchase or contract for clothing, subsistence, forage, fuel, quarters, or transportation, not exceeding the necessities of the current year. Such contracts are not within the prohibition of this section. (1876) 15 Op. Atty. Gen. 124; (1877) 15 Op. Atty. Gen. 209.

3. —— Implied contracts.—The statute does not extend to implied contracts arising from the acts of public officers in the performance of their duties. Semmes v. U. S. (1891) 26 Ct. Cl. 119; Rives v. U. S. (1893) 28 Ct. Cl. 249.

4. Restriction to appropriation for fiscal year in general.—The Commissioner of Indian affairs cannot buy supplies with money appropriated for the expenditures of one fiscal year, and transport them to the agencies with money appropriated for the expenditures of another fiscal year. Wilder v. U. S. (1880) 16 Ct. Cl. 528.

The statute restricts in every possible way the expenditures, expenses, and liabilities of the government, so far as executive officers are concerned, to the specific appropriation for each fiscal year. Id.

It is the settled and recognized policy of Congress to keep all the departments of the government, in the matter of incurring obligations for expenditures, within the appropriations annually made for conducting its affairs. Parshall v. U. S. (Mo. 1906) 147 F. 433, 77 C. C. A. 457; Sutton v. U. S. (Ct. Cl. 1921) 256 U. S. 575, 41 S. Ct. 563, 65 L. Ed. 1099, 19 A. L. R. 403.

This section and section 11 of Title 41, Public Contracts, relating to contracts involving payments from future appropriations, do not apply to license agreements permitting the government to use patented inventions. Semple v. U. S. (1924) 59 Ct. Cl. 664.

5. Obligations beyond amount of appropriation.—This section and section 11 of Title 41, Public Contracts, in effect prohibit any expenditure or contract in behalf of the government in excess of appropriations therefor, except in the war and navy departments for specific purposes. Leavitt v. U. S. (D. C. N. Y. 1888) 34 F. 623, 626.

Where an alleged liability of the government rests wholly on an appropriation, they must stand or fall together, so that when the latter is exhausted the former comes to an end. Shipman v. U. S. (1883) 18 Ct. Cl. 138.

The fact that an appropriation is exhausted justifies an officer in stopping

a contractor's work, but does not constitute a defense in a suit for breach of contract. Ferris v. U. S. (1892) 27 Ct. Cl. 542.

Where, by the special provision for a particular work commenced and in progress, it was provided that nothing in the act should be so construed as to authorize any officer of the government to bind the United States by contract beyond the amount of existing appropriation, held that, if the public interest required the President to make a contract for the work exceeding such amount he might lawfully do so, subject to the chance of future appropriations for the object, without which the contract would not bind the United States. (1853) 6 Op. Atty. Gen. 27.

In general, where the Constitution or an act of Congress requires the President to do a thing which requires the expenditure of money, he may lawfully do it, or contract to have it done, in the absence of any adequate appropriation for the object; and the cost of the thing becomes a lawful charge on the government. Id.

Contracts and purchases in the War and Navy Departments for clothing, subsistence, etc., may be made, though there is no appropriation adequate to their fulfillment, provided such contracts and purchases do not exceed the necessities of the current year. (1876) 15 Op. Atty. Gen. 124.

Executive officers are prohibited from continuing the employment of contractors and involving the government in expenditures or liabilities beyond those contemplated by Congress, or authorized by law. If further appropriations are made, there must be a new contract for their expenditure. (1895) 21 Op. Atty. Gen. 244.

The public printer cannot lawfully enter into a contract for the purchase of all the paper required in the printing of postal cards for a period of four years. (1909) 27 Op. Atty. Gen. 584.

Sections 483, 486, and 493 of Title 39, The Postal Service, generally authorizing Postmaster General to contract for carrying mails, yield to this section, limiting expenditures, so that appropriation is necessary to employment of extra carriers, etc. (1913) 30 Op. Atty. Gen. 157.

In view of sections 436, 483, 486, and 493 of Title 39, The Postal Service, expressly authorizing Postmaster General to contract for carrying mails for term not to exceed four years, regardless of appropriations therefor, he may contract for star route service for current year in excess of the appropriation, since this section and section 11 of Title 41, Public Contracts, prohibiting expenditures without appropriation expressly except "contracts authorized by law." Id.

6. —— Leases.—The lease of a building for use of the Post Office Department providing that it was made subject to an appropriation by Congress for payment of rental therein stipulated for, and that no payment could be made on account of rental until such appropriation, is sufficient to incorporate into the instrument the substance of the provision prohibiting the head of a department from involving the government in any contract for future payment of money in excess of the appropriations made for its fulfillment. Bradley v. U. S. (Ct. Cl. 1878) 98 U. S. 104, 114, 25 L. Ed. 105.

The owners of a building who have received the entire sums which Congress has from year to year appropriated as full compensation for the rent of quarters secured for the Civil Service Commission by the Secretary of the Interior in the discharge of his duty under Act Jan. 16, 1883 (see section 42 of Title 40, Public Buildings, Property, and Works) cannot maintain suit against the government under this act to recover the difference between such sums and the fair rental value of the building, including the basement, which was used without consent, on the theory that the claim is founded either on a contract, express or implied, or on the constitutional obligation to make just compensation for private property taken for public use, in view of this section, and other sections. Hoce v. U. S. (Ct. Cl. 1910) 31 S. Ct. 85, 218 U. S. 322, 54 L. Ed. 1055.

Under this section, and in the absence of statutory authority, the Secretary of the Treasury has no power to bind the United States by a contract to lease a building for five years for the use of the customs service. U. S. v. Doullut (La. 1914) 213 F. 729, 130 C. C. A. 243.

When the Postmaster General rents a building for three years at an agreed rental, but "subject to an appropriation by Congress for the payment of the rental," no liability arises beyond the will of Congress; and, though the department occupies the building the full term, and Congress make appropriations for the first and second years of the lease, yet, if no appropriation be made for the third year, no action can be maintained therefor on the lease. Bradley v. U. S. (1877) 13 Ct. Cl. 166, affirmed (1878) 98 U. S. 104, 25 L. Ed. 105.

A failure by Congress to appropriate the full amount of the rent reserved in a valid lease does not imply a new lease, nor relieve the government from liability for the rent reserved in the old lease. Freedman's Savings & Trust Co. v. U. S. (1880) 16 Ct. Cl. 19.

Leases entered into under an appropriation for one fiscal year, though for a term of years are binding on the lessee, the government, only for the year covered by the appropriation act, but the extended term named in the lease in effect gives an option to the government to con-

tinue it, holding, if subsequent appropriations be made, until the expiration of the designated term. McCollum v. U. S. (1881) 17 Ct. Cl. 92.

Though a tenancy from year to year will continue until terminated by notice, yet the Postmaster General has authority to bind the government no longer than the current fiscal year. Connecticut Mutual Life Ins. Co. v. U. S. (1886) 21 Ct. Cl. 195.

The statute in effect prohibits a lease for a longer term than the fiscal years for which appropriations may be made. Smoot v. U. S. (1903) 38 Ct. Cl. 418.

A lease for a term of years is binding on the government only until the end of the fiscal year in which it is made, with a future option from year to year until the end of the term. Id.

No contract can be implied from the occupancy of buildings which will involve the government in a greater liability than that fixed by Congress. Hooe v. U. S. (1908) 43 Ct. Cl. 245, affirmed (1910) 31 S. Ct. 85, 218 U. S. 322, 54 L. Ed. 1055.

Lease to government for term of years, when entered into under appropriation available for but one fiscal year is binding on government only for that year. Leiter v. U. S. (1926) 46 S. Ct. 477, 271 U. S. 204, 70 L. Ed. 906, affirming (1924) 59 Ct. Cl. 907.

Lease for term of years contingent on appropriation is not continued for subsequent year, after surrender of premises by appropriation in lump sum, with no reference to such leases. Id.

Lease of office space for federal agencies for term of years was in violation of law, in so far as terms extended beyond existing appropriation, precluding recovery for balance after being vacated in accordance with due notice. Id.

7. Obligations incurred after appropriation exhausted.—A party employed by the proper officer may recover for services necessarily required by the United States, notwithstanding that the appropriation for the work has been previously exhausted. King v. U. S. (1863) 1 Ct. Cl. 38.

If a contract, dependent upon an appropriation for its validity, does not exceed the appropriation, it will be deemed valid, though the appropriation be exhausted. New York Cent. & H. R. R. v. U. S. (1886) 21 Ct. Cl. 468.

After an appropriation is exhausted, a contract not for the completion of any specific work, as the erection of a building, the construction of a road, or rendering a channel adequate for the passage of vessels of a certain draft, is at an end. Work done after the appropriation is exhausted would not come within such a contract. And, if further appropriations are made, there must be a new contract for their expenditure. (1895) 21 Op. Atty. Gen. 244.

The Secretary of War is without authority to continue the employment of certain contractors, or to supervise their work, after the appropriation under which they are employed is exhausted, and their contract with the government, so far as authorized by Congress, has been exhausted. Id.

After an appropriation has been exhausted, the Secretary of the Navy has no power to incur any obligation for work on an uncompleted dry dock, even though immediate action is very important. (1896) 21 Op. Atty. Gen. 288.

8. Obligations incurred without appropriation.—The absence of an appropriation constitutes no bar to the recovery of a judgment in cases where the liability of the government has been established. Parsons v. U. S. (1879) 15 Ct. Cl. 246.

If an officer is clothed with authority to do a piece of work, without limitation as to cost, the contracts made by him therefor are binding on the government, whether money is appropriated for the purpose or not. Shipman v. U. S. (1883) 18 Ct. Cl. 138.

The absence of an appropriation out of which payment can be made is no defense to a valid claim. Winchester & Potomac R. Co. v. U. S. (1892) 27 Ct. Cl. 494, citing Collins' Case (1879) 15 Ct. Cl. 35; Shipman's Case (1883) 18 Ct. Cl. 147.

9. —— Validation by future appropriation.—A contract for postal car facilities which makes the liability of the government conditional upon future appropriations is valid, and becomes operative if appropriations be subsequently made. New York Cent. & H. R. R. v. U. S. (1886) 21 Ct. Cl. 468.

10. Knowledge chargeable to contracting party.—Where one contract on its face assumes to provide for all the work authorized by an appropriation, the contractor is bound to know the amount of the appropriation, and cannot recover beyond it. It is otherwise where the contract is for partial service, under a general appropriation. Dougherty v. U. S. (1883) 18 Ct. Cl. 496.

Thus a contractor, building a vessel under a general appropriation, is not chargeable with a knowledge of the condition of the fund. Myerle v. U. S. (1896) 31 Ct. Cl. 105; Myerle v. U. S. (1897) 33 Ct. Cl. 1.

The contractor is bound to know the restrictions imposed by statute. Sanger & Moody v. U. S. (1904) 40 Ct. Cl. 47.

11. Employment and compensation in general.—A railway postal clerk held not entitled to recover as on an implied contract for expenses on his run, in addition to his fixed salary. Parshall v. U. S. (Mo. 1906) 147 F. 433, 77 C. C. A. 457.

An employé of the government is en-

titled to the salary allowed by law, and is not limited by the amount appropriated by Congress. Graham v. U. S. (1865) 1 Ct. Cl. 380; French v. U. S. (1880) 16 Ct. Cl. 419; Langston v. U. S. (1886) 21 Ct. Cl. 10, affirmed (1886) 6 S. Ct. 1185, 118 U. S. 389, 30 L. Ed. 164. But this right does not extend to cases where the appointment and salary depend upon appropriations alone. Smith v. U. S. (1902) 37 Ct. Cl. 119. And see U. S. v. Mitchell (1883) 109 U. S. 146, 3 S. Ct. 151, 27 L. Ed. 887, reversing (1883) 18 Ct. Cl. 281.

The compensation of public officers depends upon general and continuing laws, irrespective of the annual appropriation acts. Collins v. U. S. (1879) 15 Ct. Cl. 22.

Mail contractors for whom an appropriation is made can recover for the service performed, although the appropriation has been covered into the Treasury. George v. U. S. (1883) 18 Ct. Cl. 432.

A statute which establishes a salary or prescribes a rate of remuneration expresses the intent of both parties, as a written agreement does in the cases of private employers and employés. Upton v. U. S. (1884) 19 Ct. Cl. 46.

Where no office exists by law, the appointment of a special agent for the protection of timber on the public lands at a designated salary is subject to this section. Peden v. U. S. (1886) 21 Ct. Cl. 189.

Where an appropriation is made specifically as compensation for a designated service, it may be inferred that the legislative intent was that the amount appropriated should be the measure of compensation; but where the salary or pay is contingent or variable, it must be inferred that an appropriation in excess of the minimum salary was intended to provide for the contingencies. Campagna v. U. S. (1891) 26 Ct. Cl. 316.

The Secretary of War may properly issue an order authorizing paymasters of the army to make a certificate upon the pay accounts of officers in the following form: "The within account is believed to be correct, and would be paid by me if I had public funds available for that purpose." (1877) 15 Op. Atty. Gen. 271.

Designation of clerk in Department of Commerce to perform additional services without extra pay in Department of Labor is not an "employment," prohibited by this section. (1913) 30 Op. Atty. Gen. 129.

Where pay and allowances have been fixed by law, liability of United States to pay exists, independently of any appropriation therefor. Strong v. U. S. (1925) 60 Ct. Cl. 627.

Appointment as special assistant to the Attorney General to investigate alleged crimes arising out of transactions affecting the operations of the Emergency Fleet Corporation, of one who was then special counsel to the United States Shipping Board Emergency Fleet Corporation, and who was then receiving compensation as such, with direction to serve as special assistant attorney without other compensation than he was then receiving, held not invalid, as violating this section. U. S. v. Morse (D. C. N. Y. 1922) 292 F. 273.

The President has authority to promulgate the amended regulation 47 of the Public Health Service, which gives passed assistant surgeons a right to promotion to any vacancy in the grade of surgeon, whether a vacancy exists or not, after 12 years' service and passing an examination, provided they are appointed by the President, with the advice and consent of the Senate; and the fact that the amended regulation will or will not have an effect to create or increase a deficiency in the pay fund appears to bear upon its wisdom as an administrative measure and not upon its legality. (1921) 31 Op. Atty. Gen. 570.

12. **Voluntary services.**—The civilian members of the National Board of Health being entitled only to a per diem compensation, each annual appropriation became the measure of the government's liability. No legal obligation arose to pay for service voluntarily rendered in excess of the annual appropriation. Dunwoody v. U. S. (1888) 23 Ct. Cl. 82, affirmed (1892) 12 S. Ct. 465, 143 U. S. 578, 36 L. Ed. 269.

The provision that no department or officer shall accept voluntary service for the government held to apply only to employés of the Indian office. Glavey v. U. S. (1900) 35 Ct. Cl. 242, reversed on other grounds (1901) 21 S. Ct. 891, 182 U. S. 595, 45 L. Ed. 1247. But see separate opinion of Mr. Justice Field in U. S. v. San Jacinto Tin Co. (Cal. 1888) 125 U. S. 273, 305, 8 S. Ct. 850, 31 L. Ed. 747.

Where a special assistant attorney rendered service prior to receiving an appointment, the service must be considered voluntary. Lee v. U. S. (1910) 45 Ct. Cl. 57.

The provision prohibiting voluntary service for government does not apply to acceptance of services in one executive department of a clerk regularly employed in another department, without additional compensation. (1913) 30 Op. Atty. Gen. 129.

The words "voluntary service," as employed in the above-mentioned act, were not intended to cover services rendered in an official capacity under regular appointment to an office otherwise permitted by law to be nonsalaried. (1913) 30 Op. Atty. Gen. 51.

A retired army officer, even though receiving upward of $2,500 per annum, may be employed as superintendent of an Indian school or agency, where no additional compensation is allowed, without contravening the provision of this section,

which prohibits the government from accepting voluntary service. Id

13. **Continuance and expiration of offices.**—Where an appropriation act authorizes the Secretary of the Treasury to appoint assistant agents at a designated place, the office will expire by its own limitation with the expenditure of the appropriation, and the incumbent cannot prolong its existence by continuing to perform its duties. Beaman v. U. S. (1883) 19 Ct. Cl. 5.

14. **Application of balances.**—See notes under section 712 of this title.

The balance of an appropriation made for a specific purpose may be used for that purpose in the discharge of obligations imposed by a lawful continuous contract. (1887) 18 Op. Atty. Gen. 566. See, also (1870) 13 Op. Atty. Gen. 291.

§ 666. **Gratuitous services of members of Officers' Reserve Corps.** Section 665 of this title shall not be construed to prohibit the Secretary of War from accepting the gratuitous services of members of the Officers' Reserve Corps of the Army in the furtherance of the enrollment, organization, and training of the Officers' Reserve Corps, the Reserve Officers' Training Corps, or the Enlisted Reserve Corps of the Army or in consultation upon matters relating to the military service. (May 12, 1917, c. 12, 40 Stat. 72.)

Historical Note

This was a provision of the Army appropriation act for the fiscal year 1918, cited to the text.

§ 667. **Contracts for fuel for public buildings in advance of appropriations.** The Secretary of the Treasury is authorized to contract for the purchase of fuel for public buildings under the control of the Treasury Department in advance of the availability of the appropriation for the payment thereof. Such contracts, however, shall not exceed the necessities of the current fiscal year. (Feb. 17, 1922, c. 55, 42 Stat. 388; Jan. 3, 1923, c. 22, 42 Stat. 1109; Apr. 4, 1924, c. 84, Title I, 43 Stat. 83; Jan. 22, 1925, c. 87, Title I, 43 Stat. 781.)

Historical Note

This is from the Treasury and Post Office Departments appropriation act for the year 1926, cited to the text. The same provision was contained in the prior acts cited.

§ 668. **Contracts for fuel by Secretary of War without regard to current fiscal year.** When, in the opinion of the Secretary of War, it is in the interest of the United States so to do, he is authorized to enter into contracts and to incur obligations for fuel in sufficient quantities to meet the requirements for one year without regard to the current fiscal year, and payments for supplies delivered under such contracts may be made from funds appropriated for the fiscal year in which the contract is made, or from funds appropriated or which may be appropriated for such supplies for the ensuing fiscal year. (June 30, 1921, c. 33, § 1, 42 Stat. 78.)

Historical Note

This is from the Army appropriation act for the fiscal year 1922, cited to the text.

§ 669. **Apportionment of contingent fund of departments to offices and bureaus.** In addition to the apportionment required by section 665 of this title, the head of each executive department shall, on or before the beginning of each fiscal year, apportion to each office or bureau of his department the maximum amount to be expended there-

for during the fiscal year out of the contingent fund or funds appropriated for the entire year for the department, and the amounts so apportioned shall not be increased or diminished during the year for which made except upon the written direction of the head of the department, in which there shall be fully expressed his reasons therefor; and there shall not be purchased out of any other fund any article for use in any office or bureau of any executive department in Washington, District of Columbia, which could be purchased out of the appropriations made for the regular contingent funds of such department or of its offices or bureaus. (Aug. 23, 1912, c. 350,* 37 Stat. 414.)

* Insert "§ 6" after "c. 350."

Historical Note

This section was part of the legislative, executive, and judicial appropriation act for the fiscal year 1912, cited to the text.

§ 670. Footing of paragraphs to determine amount appropriated. The total amount appropriated in the various paragraphs of an appropriation Act shall be determined by the correct footing up of the specific sums or rates appropriated in each paragraph contained therein unless otherwise expressly provided. (May 28, 1896, c. 252, § 1, 29 Stat. 148.)

Historical Note

This was a provision following an appropriation for the Department of State in the legislative, executive, and judicial appropriation act for the fiscal year 1897, cited to the text.

Cross-References

The style and title of acts making appropriations are prescribed by section 25 of Title 1, General Provisions.

§ 671. Appropriations for contingent expenses of Congress; restrictions. Appropriations made for contingent expenses of the House of Representatives or the Senate shall not be used for the payment of personal services except upon the express and specific authorization of the House or Senate in whose behalf such services are rendered. Nor shall such appropriations be used for any expenses not intimately and directly connected with the routine legislative business of either House of Congress, and the General Accounting Office shall apply the provisions of this section in the settlement of the accounts of expenditures from said appropriations incurred for services or materials. (Feb. 14, 1902, c. 17, § 1, 32 Stat. 26; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This was a proviso annexed to an appropriation for miscellaneous items, in the urgent deficiency appropriation act for the fiscal year 1902, cited to the text.

Previous provisions restricting the use of appropriations for the contingent expenses of Congress were contained in R. S. § 3680, which was superseded by this section.

Upon incorporation of this section into the Code, the words "General Accounting Office" were substituted for "accounting officers of the Treasury" to conform to section 44 of this title.

Cross-References

No payments are to be made from the contingent fund of either house of Congress unless sanctioned by a designated committee by sections 68 and 95 of Title 2, The Congress.

The provisions of section 20 of Title 41, Public Contracts, requiring contracts necessitating the advance of money, or in any manner connected with the settlements of public accounts, to be deposited in the General Accounting Office are not applicable to existing laws relating to the contingent funds of Congress, by a proviso annexed to that section.

The provision of section 665 of this title, that the apportionments of appropriations thereby provided for shall not be waived or modified, does not apply to the contingent appropriations of the Senate or House of Representatives.

Notes of Decisions

1. Expenditures from contingent fund.—"The salary of a member is not one of the ordinary expenditures of the Senate to which the contingent fund is applicable." (1860) 9 Op. Atty. Gen. 446.

§ 672. Expenses of commissions and inquiries. No accounting or disbursing officer of the Government shall allow or pay any account or charge whatever, growing out of, or in any way connected with, any commission or inquiry, except courts-martial or courts of inquiry in the military or naval service of the United States, until special appropriations shall have been made by law to pay such accounts and charges. This section, however, shall not extend to the contingent fund connected with the foreign intercourse of the Government, placed at the disposal of the President. (R. S. § 3681.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 26, 1842, c. 202, § 25, 5 Stat. 533.

Cross-References

The use of public money or of any appropriation for compensation or expenses of any commission, etc., unless authorized by law, is forbidden, and details from any executive department or other government establishment in connection with any such commission, etc., are also prohibited, by section 673 of this title.

The manner of accounting for money issued from the Treasury for the purposes of intercourse or treaty with foreign nations is prescribed by section 107 of this title.

Notes of Decisions

1. Compensation of agents and commissioners.—The executive departments cannot pay commissioners and agents appointed by them to make investigations required by Congress, except from appropriations for that purpose. (1842) 4 Op. Atty. Gen. 106; (1843) 4 Op. Atty. Gen. 248.

2. Appointment of agents.—This section having been construed to repeal the enactments which conferred the power, the Secretary of the Interior is without authority to appoint agents to examine into the condition of the local land offices. (1851) 5 Op. Atty. Gen. 377.

§ 673. Use of public moneys or appropriations for compensation or expenses of commission; details from executive departments to such commission prohibited. No part of the public moneys, or of any appropriation made by Congress, shall be used for the payment of compensation or expenses of any commission, council, board, or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of any commission, council, board, or other similar body, unless the creation of the same shall be or shall have been authorized by law; nor shall there be employed by detail, hereafter or heretofore made, or otherwise personal services from any executive department or other Government establishment in connection with any such commission, council, board, or other similar body. (Mar. 4, 1909, c. 299, § 9, 35 Stat. 1027.)

Historical Note

This section was part of the sundry civil appropriation act for the fiscal year 1910, cited to the text.

Notes of Decisions

1. Construction and operation.—This section applies only to commissions, boards, etc., which the law has not authorized, and to details thereto from any executive department or government establishment. It has no application to the Board on Life Saving Appliances, and consequently does not require the abolishment of that board or prevent the payment of the expenses of its members. (1909) 27 Op. Atty. Gen. 406. It cannot prevent the reference by the President or the heads of the several executive departments to employés of such departments of questions which relate to matters properly within their employment; and in considering such questions they may meet and act as a committee. (1909) 27 Op. Atty. Gen. 308. It does not repeal the provisions of the appropriation act of March 4, 1909, authorizing the Secretary of Agriculture to employ "such assistants, clerks, and other persons as he may consider necessary" to enable him to carry into effect the provisions of the food and drugs act (chapter 1 of Title 21, Food and Drugs), nor interfere with his submitting to a number of persons appointed pursuant to that act, for their consideration jointly as a committee or board and report to him for his information, any question upon which he is by law required to take action arising under that act. The commissions or boards referred to in this section are commissions or boards constituted without authority of law. (1909) 27 Op. Atty. Gen. 301.

This section does not require a specific authorization of a commission by a law of the United States; it being sufficient if their appointment is authorized in a general way by law. (1909) 27 Op. Atty. Gen. 432.

A board created pursuant to implied authority of 32 Stat. 941, would be "authorized by law" within the meaning of this section. (1909) 27 Op. Atty Gen. 459.

This section does not either repeal any portion of section 183 of Title 10, Army, or revoke the implied power there given to the President to order army engineers to any duty, nor does it curtail his power under that section, or otherwise, to assign such engineers to any duty. (1910) 28 Op. Atty. Gen. 270.

2. Leave of absence.—In view of this section and other sections, it was held that the Chief Statistician for Vital Statistics of the Census Bureau might be granted leave of absence without pay for a period sufficient to enable him to attend in an unofficial capacity an international commission which was to meet in Paris for the purpose of revising the nomenclature of diseases and causes of death, no expense to the Government being entailed thereby. (1920) 32 Op. Atty. Gen. 309.

§ 674. Restrictions on contingent appropriations.

No moneys appropriated for contingent, incidental, or miscellaneous purposes shall be expended or paid for official or clerical compensation. (R. S. § 3682.)

Historical Note

This section of the Revised Statutes was derived from Act July 12, 1870, c. 251, § 3, 16 Stat. 250.

Cross-References

The employment at the seat of Government in any of the Executive Departments or bureaus or offices thereof, and payment from any appropriation for contingent expenses, unless such employment is authorized and payment therefor provided in the law granting the appropriation, is forbidden by section 46 of Title 5, Executive Departments and Government Officers and Employees.

The apportionment of appropriations for contingent expenses, by monthly or other allotments, to prevent undue expenditures in one portion of the year, is provided for by section 665 of this title.

The apportionment of appropriations for contingent expenses of the several departments among the offices and bureaus thereof, is provided for by section 669 of this title.

Notes of Decisions

1. Construction and operation.—The adjectives "contingent," "incidental," and "miscellaneous" have a technical and well-understood meaning; and where a specific appropriation is made for specific objects, such as clerks, messengers, light, fuel, no disbursement can be made therefor from the appropriation for "miscellaneous expenses." Dunwoody v. U. S. (1887) 22 Ct. Cl. 269, affirmed (1892) 12 S. Ct. 465, 143 U. S. 578, 36 L. Ed. 269.

"When Congress appropriate money to pay expenses, they must be assumed to mean those expenses which are necessarily incident to the work they direct to be done. Where a duty is placed upon an officer the performance of which necessarily involves travel, or clerk hire, or

office rent, then a broad provision for expenses will include the cost of such travel, clerk hire, or office rent." Dunwoody v. U. S. (1887) 22 Ct. Cl. 279, affirmed (1892) 12 S. Ct. 465, 143 U. S. 578, 36 L. Ed. 269.

The provision of Act Aug. 15, 1876, c. 289, making appropriations for the Indian Department for the year ending June 30, 1877, namely, "that amounts now due employés for year ending June 30, 1876, may be paid out of unexpended balance of the incidental fund of said year," considered in connection with this section; and held, that under that provision amounts due for clerical or official services in the Indian service for the year ending June 30, 1876, may be paid out of the unexpended balance of the incidental fund of the Indian service for the same year. (1878) 15 Op. Atty. Gen. 434.

§ 675. Purchases from contingent funds. Except as otherwise provided no part of the contingent fund appropriated to any department, bureau, or office, shall be applied to the purchase of any articles except such as the head of the department shall deem necessary and proper to carry on the business of the department, bureau, or office, and shall, by written order, direct to be procured. (R. S. § 3683.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 26, 1842, c. 202, § 19, 5 Stat. 527.

Cross-References

Annual reports by the heads of departments of the expenditure of contingent funds are required by section 104 of Title 5, Executive Departments and Government Officers and Employees.

Special restrictions on the expenditure of appropriations for contingent expenses of the Post-Office Department, are imposed by section 677 of this title.

Restrictions on the purchase of law books, books of reference, and periodicals from appropriations for contingent expenses are imposed by section 678 of this title.

Appropriations for expenditures of the Bureau of Engraving and Printing are not to be subject to the provisions of this section, by section 178 of this title.

Notes of Decisions

1. Delegation of authority.—The authority given by this section to the heads of departments is a special authority and cannot be delegated or transferred by the head of a department to any one else, and he should not only give the order himself for the purpose, but should approve the vouchers therefor also. (1886) 18 Op. Atty. Gen. 424.

But under section 483 of Title 5, Executive Departments and Government Officers and Employees, providing that "the assistant secretary of the interior shall perform such duties in the department of the interior as shall be prescribed by the secretary, or may be required by law," it is competent for the secretary to devolve upon such assistant the authority vested by this section. (1886) 18 Op. Atty. Gen. 432.

§ 676. Purchases by Department of Commerce. Section 675 of this title shall not apply to any purchase made by the Department of Commerce when the aggregate amount involved does not exceed the sum of $25. (Mar. 3, 1921, c. 124, § 1, 41 Stat. 1303.)

Historical Note

This is from the legislative, executive, and judicial appropriation act for the fiscal year 1922, cited to the text.

§ 677. Expenditure of appropriations for contingent expenses of Post Office Department. The appropriations for the contingent expenses of the Post Office Department shall be expended as specially directed in the law, and according to the appropriations for the items specifically named, and no moneys appropriated for the specific purposes named under the head of "For contingent expenses of the Post Office Department" shall be diverted from one purpose to another;

and all moneys unexpended for one or more specific purposes shall be turned into the Treasury, and not expended, by the superintendent and disbursing officer, for any object or purpose whatsoever other than the specific ones named in the appropriation for the "Contingent expenses of the Post Office Department." (June 19, 1878, c. 329, § 1, 20 Stat. 203.)

Historical Note

This was a proviso annexed to an appropriation for contingent expenses of the Post-Office Department in the legislative, executive, and judicial appropriation act for the fiscal year 1879, cited to the text.

§ 678. **Purchases of books from appropriations for contingent expenses.** Law books, books of reference, and periodicals for use of any executive department, or other Government establishment not under an executive department, at the seat of Government, shall not be purchased or paid for from any appropriation made for contingent expenses or for any specific or general purpose unless such purchase is authorized and payment therefor specifically provided in the law granting the appropriation. (Mar. 15, 1898, c. 68, § 3, 30 Stat. 316.)

Historical Note

This section was part of the legislative, executive, and judicial appropriation act for the fiscal year 1899, cited to the text.

§ 679. **Expenditure from appropriations for private telephone service.** Except as otherwise provided by law, no money appropriated by any Act shall be expended for telephone service installed in any private residence or private apartment or for tolls or other charges for telephone service from private residences or private apartments, except for long-distance telephone tolls required strictly for the public business, and so shown by vouchers duly sworn to and approved by the head of the department, division, bureau, or office in which the official using such telephone or incurring the expense of such tolls shall be employed. (Aug. 23, 1912, c. 350, § 7, 37 Stat. 414.)

Historical Note

This section was part of the legislative, executive and judicial appropriation act for the fiscal year 1913, cited to the text.

The District of Columbia appropriation acts for recent years have provided that telephones might be maintained in the residences of certain officers of the District. See Act March 2, 1927, c. 271, 44 Stat. 1302.

The accounting officers were directed to allow in the accounts of the disbursing officers of the Navy, all payments for telephones disallowed under this section, by Act Aug. 29, 1916, c. 417, 39 Stat. 581, doubtless omitted from the Code as temporary.

§ 680. **Same; when allowed.** The provisions of section 679 of this title, or any other law, prohibiting the expenditure of public money for telephone services installed in private residences, shall not be construed to apply to or forbid the installation and use of such telephones as the Chief of Engineers may certify to be necessary for the prosecution of Government business and as the Secretary of War may authorize in connection with the construction and operation of locks and dams in the navigable waters of the United States. (Sept. 22, 1922, c. 427, § 7, 42 Stat. 1042.)

Historical Note

This section is § 7 of an act entitled "An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," cited to the text.

§ 681. Buildings under control of Treasury Department. All appropriations for public buildings under the control of the Treasury Department shall be available immediately upon the approval of the Act containing such appropriations. (R. S. § 3684.)

Historical Note

This section of the Revised Statutes was derived from Act June 10, 1872, c. 415, § 1, 17 Stat. 352.

Cross-References

No money is to be expended on any site for a public building without the written opinion of the Attorney General in favor of the validity of the title, and the consent of the legislature of the State to the purchase, by section 255 of Title 40, Public Buildings, Property, and Works.

No contract for a building is to exceed the appropriation by section 12 of Title 41, Public Contracts.

Contracting to pay a larger sum for a public building than the appropriation is punishable by section 184 of Title 18, Criminal Code and Criminal Procedure.

Appropriations for construction of public buildings remain available until completion of the work, by section 682 of this title.

Appropriations for light-houses are available for two years after the act of the State legislature ceding jurisdiction over the site takes effect, by section 685 of this title.

Appropriations for public buildings under control of the Treasury Department are to be available only for the purposes specifically enumerated, and separate estimates of appropriations for the administrative work of carrying into effect public building acts are required to be submitted annually, by section 683 of this title.

Assistant custodians and janitors of public buildings are to be paid only out of funds appropriated for that purpose by section 684 of this title.

Notes of Decisions

1. **"Control."**—The words "under the control of" in this section and elsewhere in Appropriation Acts are equivalent to the word "under," and mean "in charge of" and nothing more; "the control" referred to in all the Acts relating simply to repairs, care, maintenance, etc., and not including the right of disposition. In re Lyman (D. C. N. Y. 1893) 55 F. 29.

§ 682. Appropriations for public buildings available until completion of work. All moneys appropriated for the construction of public buildings shall remain available until the completion of the work for which they are, or may be, appropriated; and upon the final completion of each or any of said buildings, and the payment of all outstanding liabilities therefor, the balance or balances remaining shall be immediately covered into the Treasury. (June 23, 1874, c. 476, § 1, 18 Stat. 275.)

Historical Note

This was part of the first section of an act entitled "An act to authorize the Secretary of the Treasury to suspend work upon the public buildings."

The preceding portion of this section, omitted here, authorized the Secretary of the Treasury to defer operations on public buildings authorized by existing laws, but not actually commenced.

Section 2 of the act provided that in the selection of sites for public buildings reference should be had to the interest and convenience of the public as well as the interests of the Government. It is set forth in section 254 of Title 40, Public Buildings, Property, and Works.

§ 683. Appropriations for public buildings available only for purposes specifically enumerated; separate estimates for administrative work; appointments. The appropriations made to carry into effect the provisions of legislation authorizing the acquisition of land for

sites for public buildings or the enlargement thereof, or for the construction, enlargement, extension, remodeling, or special repairs of public buildings under the control of the Treasury Department, shall be deemed to be available only for the purposes specifically enumerated in said legislation, and the Secretary of the Treasury shall submit to Congress annually detailed estimates of appropriations necessary for defraying all expenses, both in the office of the Supervising Architect and in the field, of every kind and character incident to, or requisite for, the administrative work of carrying into effect the provisions of public-building Acts, so far as the same relate to public buildings under the control of the Treasury Department, such estimates to be in addition to and separate and apart from the estimates of appropriations providing specifically for the salaries of certain officers and employees in the office of the Supervising Architect. The appropriations for said administrative work, when made, shall be immediately available for such personal services and all other expenses and supplies, both for office and field work, as the Secretary of the Treasury may deem necessary and specially order or approve to carry into effect the provisions of Acts relating to the acquisition of land for sites or the enlargement thereof, or for the construction, enlargement, extension, remodeling, or special repairs of public buildings under the control of the Treasury Department, including the annual appropriations under the control of the Supervising Architect: *Provided,* That such persons as may be regularly appointed and paid from such appropriations shall be subject, in all respects, to the laws, rules, and regulations respecting entrance into or separation from the classified civil service of the United States, and shall be employed only in the office of the Supervising Architect or in field work of construction and repair under his supervision and control, and the Secretary of the Treasury shall annually submit to Congress in the estimates a statement, showing the names of all persons whose salaries or compensation are paid from said appropriations, their duties, and the rate of compensation and the amount paid to each of them, respectively: *And provided further,* That this section shall not be construed as rendering unavailable for the employment of personal services in the office of the Supervising Architect, or for any other purpose now authorized by law, any of the annual appropriations under the control of the Supervising Architect. All appropriations made for extension of the limits of cost of public buildings or sites, or for the acquisition of land for sites, or the enlargement thereof, or for the erection, enlargement, extension, remodeling, or special repairs of public buildings under the control of the Treasury Department, or for any annual appropriation under the control of the Supervising Architect, shall be subject to the provisions hereof. (May 30, 1908, c. 228, § 6, 35 Stat. 537; June 10, 1921, c. 18, § 204, 42 Stat. 21.)

Historical Note

This section was part of the public buildings act of May 30, 1908, cited to the text.

Upon incorporation into the Code, the words "Book of Estimates" were evidently changed to "estimates" to conform to section 581 of this title.

For current appropriation to enable the Secretary of the Treasury to execute and give effect to this section, see Act Jan. 26, 1927, c. 58, Title I, 44 Stat. 1043.

§ 684. **Pay of assistant custodians and janitors.** No fund appropriated, other than that for pay of assistant custodians and janitors and personal services in connection with the care of public buildings under control of the Treasury Department outside the District of Columbia, shall be used for this service. (Mar. 3, 1901, c. 853, § 1, 31 Stat. 1153.)

Historical Note

This was a provision of the sundry civil appropriation act for the fiscal year 1902, cited to the text.

§ 685. **Lighthouses.** Appropriations for establishing lighthouses shall be available for expenditure for two years after acts of State legislatures ceding jurisdiction over sites take effect. This section shall not, however, apply to general appropriations for lighthouse purposes. In no case shall any special appropriation be available for more than two years without further provision of law. (R. S. § 3685.)

Editorial comment.—This section seems to be superseded by section 713 of this title.

Historical Note

This section of the Revised Statutes was derived from Act June 10, 1872, c. 415, § 1, 17 Stat. 355.

§ 686. **Purchase or manufacture of stores or materials or performance of services by bureau or department for another bureau or department.** Whenever any Government bureau or department procures, by purchase or manufacture, stores or materials of any kind, or performs any service for another bureau or department, the funds of the bureau or department for which the stores or materials are to be procured or the service performed may be placed subject to the requisitions of the bureau or department making the procurement or performing the service for direct expenditure: *Provided,* That funds so placed with the procuring bureau shall remain available for a period of two years for the purposes for which the allocation was made unless sooner expended: *And provided further,* That when the stores being procured by one bureau of the War or Navy Departments for another bureau of such departments are for current issue during the year stores of equal value may be issued from stock on hand in place of any of those aforesaid. (Mar. 4, 1915, c. 143, § 1, 38 Stat. 1084; May 21, 1920, c. 194, § 7, 41 Stat. 613.)

Historical Note

This section, except the last proviso, is from Act May 21, 1920, c. 194, § 7, cited to the text, which superseded similar provisions, applying only to the War and Navy Departments, in Act March 4, 1915, c. 143, § 1, also cited to the text. The second proviso is from the Act of 1915.

§ 687. **Appropriations for Court of Customs Appeals; detailed statement of expenditure.** A detailed statement of the expenditure of the appropriations for the United States Court of Customs Appeals shall be submitted to Congress at the beginning of each regular session thereof. (Mar. 4, 1911, c. 237, § 1, 36 Stat. 1234.)

Historical Note

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1912, cited to the text. A similar requirement as to the appropriation for the Commerce Court, by a subsequent provision of this act, was superseded by the abolition of that court by Act Oct. 22, 1913, c. 32, 38 Stat. 219.

§ 688. System of bookkeeping in Bureau of Indian Affairs; allotment of appropriations; classified statement to accompany estimates. A system of bookkeeping shall be used in the Bureau of Indian Affairs, which will afford a ready analysis of expenditures by appropriations and allotments and by units of the service, showing for each class of work or activity carried on, the expenditures for the operation of the service, for repairs and preservation of property, for new and additional property, salaries and wages of employees, and for other expenditures. Provision shall be made by the Secretary of the Interior for further analysis of each of the foregoing classes of expenditures, if, in his judgment, he shall deem it advisable.

Annually a detailed statement of expenditures, as hereinbefore described, shall be incorporated in the annual report of the Commissioner of Indian Affairs and transmitted by the Secretary of the Interior to Congress on or before the first Monday in December.

Before any appropriation for the Indian Service is obligated or expended, the Secretary of the Interior shall make allotments thereof in conformity with the intent and purpose of this section, and such allotments shall not be altered or modified except with his approval. (June 30, 1913, c. 4, § 26, 38 Stat. 103.)

Historical Note

This was part of the Indian appropriation Act for the fiscal year 1914 cited to the text.

Prior to its incorporation into the Code, the first paragraph required the Secretary of the Interior to cause the described system of bookkeeping to be installed. The provision for installation was doubtless omitted as temporary and executed, but the paragraph was evidently regarded as requiring the use of such system.

The Bureau of Efficiency was required to prepare and submit to the Secretary of the Interior a system of bookkeeping and accounting that would enable the Secretary to meet the requirements of this section, by Act May 18, 1916, c. 125, § 28, 39 Stat. 159.

Cross-References

A portion of the original text of this section, omitted here, is incorporated in section 613 of this title.

The Secretary of the Interior is required to annually transmit to the Speaker of the House of Representatives a statement of all the fiscal affairs of all Indian tribes for whose benefit expenditures from either public or tribal funds shall have been made by any officer, etc., in the Indian Department during the preceding fiscal year, by section 143 of Title 25, Indians.

Expenditures from Indian tribal funds without specific appropriations by Congress, except in certain specified cases, are prohibited by section 123 of Title 25, Indians.

PERMANENT ANNUAL APPROPRIATIONS

§ 711. Permanent indefinite appropriations. There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purposes hereinafter specified, such sums as may be necessary for the same, respectively; and such appropriations shall be deemed permanent annual appropriations.

Treasury Department

(1) **Consular receipts.** For payment of the proceeds of the personal estates of American citizens who die abroad, to the legal representatives of the said deceased party upon proper demand and proof.

(2) **Interest on public debt.** For payment of interest on the public debt, under the several Acts authorizing the same.

(3) **Refunding moneys erroneously received and covered.** To refund moneys received and covered into the Treasury before the payment of legal and just charges against the same.

(4) **Redemption of stamps (internal revenue).** Of such sum of money as may be necessary to repay the amount or value paid for internal-revenue stamps which may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or which through mistake may have been improperly or unnecessarily used.

(5) **Debentures and other charges (customs).** To pay debentures and other charges arising from duties, the revenue remaining in the hands of the collecting officers not being sufficient to pay said debentures.

(6) **Debentures and drawbacks (customs).** For the payment of debentures or drawbacks, bounties, and allowances, which are or may be authorized, to be expended under the direction of the Secretary of the Treasury payable according to laws authorizing them: *Provided,* The collectors of customs shall be the disbursing agents to pay the same.

(7) **Repayment of excess of deposits for unascertained duties (customs).** To repay to importers the excess of deposits for unascertained customs duties, or duties or other moneys paid under protest.

(8) **Refunding duties on goods destroyed (customs).** For refunding duties paid or accruing on goods, wares, or merchandise injured or destroyed by accidental fire or other casualty, while in the custody of the officers of customs, in any public or private warehouse, or in the appraisers' stores undergoing appraisal, in pursuance of law or regulations of the Treasury Department, or after their arrival within the limits of any port of entry of the United States, and before the same have been landed under the supervision of the officers of the customs, or while in transportation under bond from the port of entry to any other port of the United States.

(9) **Public Health Service.** The proceeds of leases and sales of marine-hospital buildings, and lands appertaining thereto, for the Public Health Service, except that all sums received by the Public Health Service during the fiscal year 1926, except allotments and reimbursements on account of patients of the United States Veterans' Bureau, shall be covered into the Treasury as miscellaneous receipts.

(10) **Refunding proceeds of goods seized and sold.** To refund the proceeds of goods, wares, and merchandise seized and sold for having been illegally imported into the United States.

(11) **Refunding proceeds of unclaimed merchandise (customs).** To repay to claimants the overplus received from the sale under the customs laws of unclaimed merchandise, on due proof of their property and entitlement.

WAR DEPARTMENT

(12) **Soldiers' Home.** For the support of the Soldiers' Home the following funds are set apart and appropriated: All stoppages or fines adjudged against soldiers by sentence of courts-martial over and above any amount that may be due for the reimbursement of Government or of individuals; all forfeitures on account of desertion; and all moneys belonging to the estates of deceased soldiers, which are or

may be unclaimed for the period of three years subsequent to the death of said soldier or soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased.

(13) **Horses and other property lost in military service.** To pay for horses, mules, oxen, wagons, carts, sleighs, harness, steamboats and other vessels, railroad engines and railroad cars, killed, lost, captured, destroyed, or abandoned while in the military service under the provisions of chapter 6 of this title.

NAVY DEPARTMENT

(14) **Indemnity for lost clothing.** To allow and pay to each person, not an officer, employed on a vessel of the United States, sunk or otherwise destroyed, and whose personal effects have been lost, a sum not exceeding $60. In the event of the death of the person, this sum is to be paid to his proper legal representatives.

(15) **Prize money.** For the proceeds of derelict and salvage cases adjudged by the courts of the United States to salvors.

INTERIOR DEPARTMENT

(16) **Deposits for surveying public lands.** Of the amount deposited by individuals under the provisions of Title 43, to pay the cost and expenses incident to the survey of lands, not mineral or reserved, upon which they have settled, any excess of the sums so deposited, over and above the actual cost of surveys, comprising all expenses incident thereto, for which they were severally deposited, to be repaid to the depositors, respectively.

(17) **Five per centum fund to States.** To pay to the States of Missouri, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, and Nevada, 5 per centum of the net proceeds of sales of all public lands lying within their limits, for the purpose of education or of making public roads and improvements, in pursuance of the Acts of March 6, 1920, chapter 22 (Third Statutes, page 547); of June 23, 1836, chapter 121 (Fifth Statutes, page 60); of March 3, 1845, chapter 75 (Fifth Statutes, page 788); of March 3, 1845, chapter 76 (Fifth Statutes, page 790); of August 6, 1846, chapter 53 (Ninth Statutes, pages 58, 179); of February 26, 1857, chapter 60 (Eleventh Statutes, page 167); of February 14, 1859, chapter 33 (Eleventh Statutes, page 384); of February 28, 1859, chapter 65 (Eleventh Statutes, page 388); and of March 21, 1864, chapter 36 (Thirteenth Statutes, page 32).

(18) **Indemnity for swamp lands for States.** To pay to the States the proceeds of swamp lands within their limits which may have been erroneously sold by the United States.

(19) **Refunding money for lands erroneously sold.** To pay to the purchaser or purchasers the sum or sums of money received for lands erroneously sold by the United States.

(20) **Payment of interest to North Carolina Cherokees.** To pay each member of every family of the Cherokee Nation of Indians that remained in the State of North Carolina at the time of the treaty of New Echota, May 23, 1836, interest at the rate of 6 per centum per

annum on a sum equal to $53.33 for each individual member, ascertained as provided in the Act of July 29, 1848, chapter 118, section 4 (9 Stat. 264).

MISCELLANEOUS

(21) **Smithsonian Institution.** To pay for the erection of buildings and expenses of the Smithsonian Institution, being 6 per centum on the fund derived from the bequest of James Smithson. (R. S. §§ 3048, 3689; June 20, 1874, c. 328, § 4, 18 Stat. 109; Mar. 3, 1875, c. 129, § 1, 18 Stat. 343; June 19, 1878, c. 329, § 1, 20 Stat. 178; May 26, 1908, c. 198, § 1, 35 Stat. 274; June 25, 1910, c. 384, § 8, 36 Stat. 773; Aug. 14, 1912, c. 288, § 1, 37 Stat. 309; Jan. 22, 1925, c. 87, 43 Stat. 775.)

Editorial comment.—Sections 1 and 2 of the Act of Aug. 20, 1912, c. 309, 37 Stat. 320, omitted from the Code provided for the acceptance of a bequest made in trust to pay the net income to the Librarian of Congress for specified purposes. Section 3 read as follows: "That in compliance with said conditions the principal of the sum so received and paid into the Treasury of the United States shall be credited on the books of the Treasury Department as a perpetual trust fund; and the sum of eight hundred dollars being equivalent to four per centum on the principal of said trust fund, be, and the same is hereby, appropriated, out of any moneys in the Treasury not otherwise appropriated, and such appropriation shall be deemed a permanent annual appropriation and shall be expended in the manner and for the purposes herein authorized and as provided in the said bequest."

Historical Note

This section embraces such parts of R. S. § 3689, as have not been repealed, become obsolete, or been superseded.

The portions of R. S. § 3689, carried into the different paragraphs of this section were derived from the acts indicated below.

Paragraph 1: Act April 14, 1792, c. 24, § 2, 1 Stat. 255.

Paragraph 2: Act Feb. 9, 1847, c. 7, 9 Stat. 123.

Paragraph 3: Act July 23, 1866, c. 208, § 12, 14 Stat. 208.

Paragraph 4: Act June 30, 1864, c. 173, § 161, 13 Stat. 294; Act June 6, 1872, c. 315, § 41, 17 Stat. 257.

Paragraph 5: Act Oct. 16, 1837, c. 10, § 2, 5 Stat. 207.

Paragraph 6: Act March 3, 1849, c. 110, § 2, 9 Stat. 398.

Paragraph 7: Act June 30, 1864, c. 171, § 16, 13 Stat. 215.

Paragraph 8: Act March 28, 1854, c. 30, § 8, 10 Stat. 273; Act March 3, 1865, c. 80, § 13, 13 Stat. 495.

Paragraph 9: Act April 20, 1866, c. 63, § 1, 14 Stat. 40.

Paragraph 10: Act April 2, 1844, c. 8, § 2, 5 Stat. 653.

Paragraph 11: Act March 2, 1799, c. 22, § 56, 1 Stat. 670.

Paragraph 12: Act March 3, 1851, c. 25, § 7, 9 Stat. 596; Act July 5, 1862, c. 133, § 2, 12 Stat. 508.

Paragraph 13: Act March 3, 1849, c. 129, §§ 2, 6, 9 Stat. 415, 416; Act March 3, 1863, c. 78, § 5, 12 Stat. 743.

Paragraph 14: Act July 4, 1864, c. 248, §§ 2, 3, 13 Stat. 390.

Paragraph 15: Act June 30, 1864, c. 174, § 16, 13 Stat. 311.

Paragraph 16: Act May 30, 1862, c. 86, § 10, 12 Stat. 410; Res. July 1, 1864, No. 60, 13 Stat. 414.

Paragraph 17: Act March 6, 1820, c. 22, § 6, 3 Stat. 547. Act June 23, 1836, c. 121, § 5, 5 Stat. 60. Act March 3, 1845, c. 75, § 1, 5 Stat. 788. Act March 3, 1845, c. 76, § 6, 5 Stat. 790. Act Aug. 6, 1846, c. 89, § 7, 9 Stat. 58. Act March 3, 1847, c. 53, § 3, 9 Stat. 179. Act Feb. 26, 1857, c. 60, § 5, 11 Stat. 167. Act Feb. 14, 1859, c. 33, § 4, 11 Stat. 384. Act Feb. 28, 1859, c. 65, § 1, 11 Stat. 388. Act March 21, 1864, c. 36, § 10, 13 Stat. 32.

Paragraph 18: Act March 2, 1855, c. 147, § 2, 10 Stat. 634.

Paragraph 19: Act Jan. 12, 1825, c. 5, 4 Stat. 80; Act Feb. 25, 1825, c. 13, § 3, 4 Stat. 91; Act Feb. 28, 1859, c. 64, § 1, 11 Stat. 387.

Paragraph 20: Act July 29, 1848, c. 118, § 4, 9 Stat. 264.

Paragraph 21: Act Aug. 10, 1846, c. 178, § 2, 9 Stat. 102.

Provisions similar to those of R. S. § 3689, carried into paragraph 6 of this section were also contained in R. S. § 3048, cited to the text.

Upon incorporation into the Code, the words "Public Health Service" were substituted in paragraph 9 for "marine hospital establishment," appearing in the original text, to conform to Act Aug. 14, 1912, c. 288, § 1, cited to the text (section 1 of Title 42, Public Health). The exception in that paragraph of sums received during the fiscal year 1926, is from

Act Jan. 22, 1925, c. 87, 43 Stat. 775, cited to the text. A similar provision had appeared in prior acts, and has been repeated in later acts. See Act Jan. 26, 1927, Title 1, 44 Stat. 1038.

The following provisions of R. S. § 3689, have been repealed, as indicated: A provision making a permanent appropriation for salaries and expenses of the Southern Claims Commission, by Act June 19, 1878, c. 329, § 1, 20 Stat. 205, cited to the text; a provision making a permanent indefinite appropriation for the payment of the salaries of steamboat inspectors, together with their traveling and other expenses when on official duty and instruments, books, etc., necessary to carry into effect the provisions of Title LII of the Revised Statutes, "Regulation of Steam-Vessels," by Act June 25, 1910, c. 384, § 8, 36 Stat. 773, cited to the text; a provision making a permanent appropriation to pay the expenses of the issue, re-issue, transfer, delivery, redemption, and destruction of securities, legal tender notes, etc., by Act June 20, 1874, c. 328, § 4, 18 Stat. 109, cited to the text; a provision making a permanent appropriation, of moneys collected from masters or owners of vessels, at the rate of 40 cents per month for every seaman employed, for a hospital fund, by Act June 26, 1884, c. 121, § 15, 23 Stat. 57; a provision for a fund of one per centum of the entire debt of the United States to be set apart as a sinking fund for the purchase or payment of the public debt, in such manner as the Secretary of the Treasury should from time to time direct, by Act March 3, 1919, c. 100, § 6(b), 40 Stat. 1312; a provision making a permanent appropriation to refund and pay back internal revenue duties erroneously or illegally assessed or collected, by Act Feb. 24, 1919, c. 18, § 1316(c), 40 Stat. 1145; a provision making a permanent appropriation of stoppages and fines adjudged against volunteer officers and soldiers' forfeitures on account of desertion, etc., for the National Home for Disabled Volunteer Soldiers, by Act March 3, 1875, c. 129, § 1, 18 Stat. 359; a provision making a permanent indefinite appropriation to pay for the instruction of the indigent blind children formerly instructed in the "Columbia Institution for the Instruction of the Deaf, Dumb, and Blind," in Maryland, or some other State, by Act May 26, 1908, c. 198, § 1, 35 Stat. 295.

Provisions of R. S. § 3689, making permanent indefinite appropriations for the following purposes were probably omitted from the Code as obsolete: For the return of proceeds from the sale of captured and abandoned property in insurrectionary districts to the owners thereof; to repay to purchasers evicted through failure of title from lands sold to them in insurrectionary districts for direct taxes; for the adjustment of accounts of the collector of customs and ex-officio depositary at Chicago to allow him a proper credit for moneys held by him and destroyed by the fire in that city on October 9 and 10, 1871; for refunding the principal and interest of the purchase-money of lands redeemed after the sale thereof for direct taxes in the insurrectionary districts within the United States; to refund taxes illegally collected under the direct-tax laws; for payment of interest on bonds issued to the Pacific Railway; to pay the expenses of preparing, issuing and disposing of bonds authorized under the Act of July 14, 1870, c. 256; to pay persons employed in the insurrectionary States as officers connected with the Treasury Department during the years 1865 and 1866; to refund duties under Act July 14, 1870, c. 255, § 26, 16 Stat. 269, and Res. Jan. 30, 1871, No. 18, 16 Stat. 592; to refund duties paid on tea and coffee in bonded warehouses on July 1, 1872; for the payment of a drawback of the import duties paid on all materials, except lumber, used on buildings erected on the site of buildings burned by the fire in Chicago; to refund duties which had been paid on merchandise imported in French vessels from countries other than France, and which was on shipboard bound for the United States on November 5, 1872; for the payment of bounties to soldiers, or their widows or legal heirs, under sections 12–16 of the sundry civil appropriation act for the fiscal year 1867; to pay the members of certain military organizations in Kansas; for the payment of the tax on salaries and compensation under the income tax law of 1867; to pay the traveling expenses of such California and Nevada volunteers as were discharged at points distant from the place of enlistment; for the settlement of accounts with laborers, workmen, and mechanics employed by the Government between June 25, 1868, the date of the eight-hour law, and May 19, 1869, the date of the President's proclamation to pay without reduction on account of reduction of hours; to pay the expenses for the survey of the Vigil and Saint Vrain land-claims; to pay the expenses of the survey of the Nolan land-claim in Colorado.

A portion of R. S. § 3689, omitted here made a permanent indefinite appropriation for the payment of drawback on articles exported under Act July 1, 1862, c. 119. It was amended by Act Feb. 27, 1877, c. 69, 19 Stat. 249, by making the appropriation applicable for the payment of drawback on articles exported under R. S. § 3441. Said section 3441 authorized a drawback on fermented liquors, and on medicinal preparations, perfumery, cosmetics, etc. (articles designated in Schedule A, following R. S. § 3437), when exported. So much of the section as au-

thorized a drawback on fermented liquors was repealed by Act June 18, 1890, c. 432, 26 Stat. 162, and so much of the section as authorized a drawback on the articles in Schedule A was superseded by Act March 3, 1883, c. 121, § 1, 22 Stat. 488, repealing the taxes on such articles.

A portion of the section omitted here made a permanent appropriation for the distributive shares of fines, penalties, and forfeitures under the customs laws. This provision was superseded by the repeal of the laws under which shares of fines, etc., were paid to informers or officers, by the Anti-Moiety Act of June 22, 1874, c. 391, § 2, 18 Stat. 186.

Another portion of the section omitted here made an appropriation for one moiety of proceeds of prizes captured by vessels of the United States to be distributed to officers and crews thereof. The provisions authorizing the distribution among captors of the proceeds of property captured as prize were repealed by Act March 3, 1899, c. 413, § 13, 30 Stat. 1007.

Another portion making a permanent appropriation to pay the Reporter of the Supreme Court for 300 copies of the second volume of the decisions of the court, was probably omitted from the Code as superseded by Judicial Code, § 226, as amended by Act July 1, 1922, c. 267, § 2, 42 Stat. 816 (section 333 of Title 28, Judicial Code and Judiciary).

Another portion of the section omitted here making an appropriation for compensation of supervisors of election, was superseded by the repeal of all provisions relating to supervisors of election, by Act Feb. 8, 1894, c. 25, 28 Stat. 36.

All laws and parts of laws, to the extent that they made a permanent indefinite appropriation for expenses of parting and refining bullion, were repealed by a provision of Act March 4, 1911, c. 240, 36 Stat. 1292.

So much of Act June 19, 1886, c. 421, 24 Stat. 79, as made a permanent indefinite appropriation to pay compensation to shipping commissioners and clerks of shipping commissioners under said act, was repealed, by Act June 25, 1910, c. 384, § 7, 36 Stat. 773.

The head tax on aliens entering the United States, collected under Act Feb. 20, 1907, c. 1134, § 1, 34 Stat. 898, together with all moneys received under the laws regulating the immigration of aliens, which, by provisions of said section, were to constitute a permanent appropriation to be called the "immigrant fund," to be used to defray the expense of regulating the immigration of aliens, were to be covered into the Treasury to the credit of "miscellaneous receipts," by a provision of Act March 4, 1909, c. 299, § 1, 35 Stat. 982.

R. S. § 3687, as amended by Act Aug. 18, 1894, c. 301, § 1, 28 Stat. 391, making a permanent appropriation for collecting the revenue from customs, was repealed by Act Aug. 24, 1912, c. 355, 37 Stat. 434. Act June 15, 1880, c. 225, 21 Stat. 226, requiring the Secretary of the Treasury to make a statement to Congress of the expenditure of the amount appropriated by R. S. § 3687, and receipts thereunder, and Act Aug. 5, 1882, c. 389, § 5, 22 Stat. 256, requiring unexpended balances to be covered into the Treasury after remaining upon the books of the Treasury for two fiscal years, were superseded by the repeal of R. S. § 3687.

R. S. § 3688, appropriating annually, out of receipts for duties on imported merchandise, a sum, for the payment of the public debt, equal to the interest on all bonds belonging to the sinking fund, was repealed by Act March 3, 1919, c. 100, § 6(b), 40 Stat. 1312.

Cross-References

A permanent appropriation of $3,000,000 for expenses of inspection of cattle, etc., and for carrying into effect the provisions of sections 71 to 94 of Title 21, Food and Drugs, is made by section 95 of that title.

A permanent annual appropriation of $10,000, for the purposes authorized by chapter 6 of Title 20, Education, is made by section 101 of that title.

A continuing appropriation for survey of railroad land grants is made by section 886 of Title 43, Public Lands.

Annual appropriations for the more complete endowment and maintenance of colleges of agriculture and the mechanic arts, are provided for in section 322 of Title 7, Agriculture.

Annual appropriations for the endowment and maintenance of agricultural experiment stations are provided for in section 369 of Title 7, Agriculture.

A provision for an annual appropriation for the support of the National Guard is contained in section 21 of Title 32, National Guard.

The duties of consular officers in regard to the personal estates left by citizens dying within their consulates are prescribed by section 75, et seq. of Title 22, Foreign Relations and Intercourse.

Payment of interest on the public debt is provided for by section 732 of this title.

The refunding of duties paid on goods, etc., injured or destroyed while in custody of customs officers, in warehouse, etc., is authorized by section 464 of Title 19, Customs Duties.

Provisions setting apart, for support of the Soldiers' Home, the funds appropriated by paragraph 12 of this section, are made by section 44 of Title 24, Hospitals, Asylums, and Cemeteries.

Provisions for indemnity to States for swamp lands within their limits sold by the United States are made by section 981 of Title 43, Public Lands.

Provisions for the disposition of the money, etc., received on account of the fund bequeathed by James Smithson, and appropriating six per cent. interest thereon for the perpetual maintenance and support of the Smithsonian Institution, are made by section 54 of Title 20, Education.

In connection with paragraph 9 of this section, see section 7 of Title 24, Hospitals, Asylums, and Cemeteries, concerning the lease or sale of marine hospitals.

Notes of Decisions

1. Refunds of money erroneously collected (Par. 3).—R. S. § 5283 (section 23 of Title 18, Criminal Code and Criminal Procedure), provided for the forfeiture of vessels violating neutrality laws, "one half to the use of the informer, and the other half to the use of the United States." Held, that where a vessel was forfeited and sold under this provision, and one half of the proceeds was paid to the United States, the other half remaining in the custody of the court, the latter half would not be paid to the United States, even after the lapse of many years, where it did not appear that it would not be needed to satisfy a judgment for some claimant as informer; and it was immaterial that this section provides for refunding moneys "received and covered into the treasury before the payment of legal and just charges against the same." U. S. v. The Resolute (D. C. R. I. 1889) 40 F. 543.

Congress may provide, as it did in section 842 of Title 28, Judicial Code and Judiciary, that after judgment for recovery of money exacted by or paid to collector of internal revenue under color of authority, particularly in matters pertaining to collection and disbursement of taxes and revenue, on certificate by court that there was probable cause for act done by collector, or that he acted under directions of Secretary of Treasury, or other proper government officer, execution may not issue on judgment against collector, and may require amount so recovered to be paid out of proper appropriation from Treasury. White v. Weiss (D. C. Ohio, 1925) 7 F.(2d) 139.

2. Decisions under repealed and superseded provisions.—As to eviction from lands sold for direct taxes, see Beaumont v. U. S. (1890) 25 Ct. Cl. 349; Bliss v. U. S. (1892) 27 Ct. Cl. 388.

When right of action accrued for money collected under direct tax laws, see Harrison v. U. S. (1885) 20 Ct. Cl. 175; Simons v. U. S. (1884) 19 Ct. Cl. 601. See also U. S. v. Taylor (Ct. Cl. 1881) 104 U. S. 216, 26 L. Ed. 721.

Interest on a direct tax as money collected "without warrant of law," see Simons v. U. S. (1884) 19 Ct. Cl. 601.

As to conclusiveness of decision concerning refund of internal revenue taxes, see (1873) 14 Op. Atty. Gen. 275.

As to use of the appropriation for collecting the revenue from customs in the erection of a temporary structure, see (1890) 19 Op. Atty. Gen. 607.

3. —— Pacific Railway bonds.—Government having issued subsidy bonds to predecessors of Missouri Pacific Railroad by Act July 1, 1862, 12 Stat. 489, and provided by the original text of this section for payment of interest thereon, and by Act July 2, 1864, having subordinated its lien to the lien of first mortgage bonds, has the right of a junior mortgagee to redeem, and to retain one-half of the compensation, but has no right to demand annual payment of 5 per cent. of company's net earnings, which was security fund for the loan, and its existence depends upon the existence of the debt, in view of sections 86 and 87 of Title 45, Railroads. (1913) 30 Op. Atty. Gen. 35.

The present owner of the Central Branch of the Union Pacific Railroad Company is not bound to pay the principal or interest on the government bonds issued to the original company in aid of the construction of its road. (1914) 30 Op. Atty. Gen. 318.

The government has no present right to claim either the 5 per cent. of the net earnings from the Missouri Pacific Railroad Company which succeeded to the rights of the original company or to withhold the other half of the compensation for services rendered it. Id.

§ 712. Balances of appropriations; expenditure. Except as otherwise provided by law, all balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year, and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts

properly made within that year; and balances not needed for such purposes shall be carried to the surplus fund. This section, however, shall not apply to appropriations known as permanent or indefinite appropriations. (R. S. § 3690.)

Historical Note

This section of the Revised Statutes was derived from Act July 12, 1870, c. 251, § 5, 16 Stat. 251.

Cross-References

Certain appropriations specified are to continue available until otherwise ordered by Congress, by section 713 of this title.

Appropriations for construction of public buildings are to remain available until completion of the work, by section 682 of this title.

Appropriations for light-houses are made available for two years after the act of the State legislature ceding jurisdiction over the site takes effect, by section 685 of this title.

The provisions of this section apply to appropriations for the maintenance of the National Home for Disabled Volunteer Soldiers, by section 719 of this title.

Notes of Decisions

1. Application of balances in general.—Under this statute balances of appropriations made for the year 1869-70, of any description, may be applied to the service of the year 1870-71, so far as, first, to pay in the latter year expenses properly incurred in the former year; and, second, to pay dues upon contracts properly made within the former year, though such contracts be not performed till within the latter year. (1870) 13 Op. Atty. Gen. 289.

Neither this section nor section 665 of this title, places any restriction upon the use of balances, first, where they are from appropriations not made in annual appropriation bills; second, where they are from appropriations not made especially for a particular fiscal year; third, where they are from appropriations known as permanent; and, fourth, where they are from appropriations known as indefinite. Id.

The Secretary of the Interior is authorized to apply certain unexpended balances of appropriations to defray certain charges incurred by his Department in connection with the Centennial Exhibition. (1877) 15 Op. Atty. Gen. 204.

The unexpended balances of the appropriations made by the Act of March 3, 1883 (22 Stat. 476, 477), under the headings "Bureau of Construction and Repair," and "Bureau of Steam Engineering," may be used in completing the hulls and machinery of the cruisers Chicago, Boston, and Atlanta, provided the total expenditure shall not exceed the total estimated cost thereof, as reported by the naval advisory board. (1887) 18 Op. Atty. Gen. 566.

The balance of an appropriation made for a specific purpose may be used for that purpose in the discharge of obligations imposed by a lawful continuous contract. Id.

2. Funds in hands of disbursing officers.—Although funds have been paid from the treasury into the hands of disbursing officers, if they have not been paid out or have not been expressly set aside for the payment of debts which have been ascertained and determined, when the time arrives at which the unexpended balances of appropriations lapse into the treasury, it will be the duty of the disbursing officers to repay such funds, that they may be carried to the surplus fund and thereafter covered into the treasury. If, however, previous to that time, they should have issued certificates by which claims upon these appropriations have been definitely determined and decided, and the parties in whose favor the certificates are issued are entitled to their money, although the payment had not actually been made before the date referred to, such claims may thereafter properly be paid by the disbursing officers. For what period the disbursing officers should be allowed to retain in their hands funds for the purpose of meeting certificates issued by them is a matter of administration only, the regulation of which falls within the jurisdiction of the secretary of the treasury. (1877) 15 Op. Atty. Gen. 357.

3. Salary and compensation.—See Parshall v. U. S. (Mo. 1906) 147 F. 433, 77 C. C. A. 457.

Unexpended balances of moneys appropriated for the pay of the Navy and Marine Corps for the fiscal year ending June 30, 1884, were not available for payment of the Navy and Marine Corps for services rendered during the fiscal year ending June 30, 1885. (1886) 18 Op. Atty. Gen. 412.

4. Opinions under former statutes.—See (1831) 2 Op. Atty. Gen. 442; (1839) 3 Op. Atty. Gen. 415; (1854) 7 Op. Atty. Gen. 1; (1854) 7 Op. Atty. Gen. 14; (1870) 13 Op. Atty. Gen. 181.

§ 713. Same; carried to surplus fund. After the 1st day of July, in each year, the Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury: *Provided,* That this provision shall not apply to permanent specific appropriations, appropriations for rivers and harbors, lighthouses, or public buildings, or the pay of the Navy and Marine Corps; but the appropriations named in this proviso shall continue available until otherwise ordered by Congress. (June 20, 1874, c. 328, § 5, 18 Stat. 110; July 26, 1886, c. 781, § 2, 24 Stat. 157; Mar. 3, 1919, c. 99, § 6, 40 Stat. 1309.)

Historical Note

This section was part of the legislative, executive, and judicial appropriation act of June 20, 1874, cited to the text.

Further provisions of the original text omitted here were temporary or were repealed by Act June 14, 1878, c. 191, § 4, 20 Stat. 115, or Act March 3, 1919, c. 99, § 6, cited to the text. The provision repealed by the Act of 1878, required the Secretary of the Treasury to report balances of appropriations for specific objects that needed to be reappropriated. The Act of 1919 repealed so much of this section as excepted appropriations for fortifications.

Provisions similar to those of this section, for the disposal of unexpended balances of appropriations, remaining in the Treasury on July 1, 1904, were made by Act March 4, 1909, c. 299, § 10, 35 Stat. 1027.

Cross-References

No specific or indefinite appropriation made in any regular annual appropriation act is to be construed as permanent unless it belongs to one of the classes excepted from the operation of this section, or unless it is in terms made available continuously, by section 718 of this title. In this connection see, also, section 716 of this title.

Further provisions relating to unexpended appropriations are made by section 715 of this title.

Notes of Decisions

1. Permanent specific appropriation.—An appropriation to enable the Secretary of Agriculture to prepare certain property for an experiment station and to remove a previous experiment station to a new site, is a "permanent specific appropriation." (1893) 20 Op. Atty. Gen. 599.

2. Duties of disbursing officers.—Under this section it is the duty of disbursing officers, with whom funds have been placed for disbursement, when the time arrives at which unexpended balances of the appropriations from which such funds were drawn lapse, to repay the funds remaining in their hands, in order that they may be carried to the surplus fund and covered into the Treasury. (1877) 15 Op. Atty. Gen. 358.

Where previous to that time, these officers have issued certificates by which claims upon such appropriations have been definitely ascertained, and payment thereof has not actually been made before that time, such claims may thereafter be paid by them out of the proper funds remaining in their hands. Id.

For what period and to what amount such officers should be allowed to retain in their hands funds for that purpose, after the date when unexpended balances of the appropriation lapse, is a matter of administration, falling within the province of the Secretary of the Treasury to regulate. Id.

3. Reallotment of unexpended balances.—Under this section and section 712 of this title, any unexpended and unobligated balance of allotment made to any department of the Government from the National Security and Defense appropriation for the fiscal year ending June 30, 1919 (40 Stat. 635), might be recalled from that department by the President and restored to the parent appropriation and be then reallotted by him to any other department to be used for purposes authorized by the appropriation. (1920) 32 Op. Atty. Gen. 359.

§ 714. Same; reports to Congress as to claims. It shall be the duty of the General Accounting Office to continue to receive, examine, and consider the justice and validity of all claims under appropriations the balances of which have been exhausted or carried to the surplus fund under the provisions of section 713 of this title that may be

brought before them within a period of five years. And the Secretary of the Treasury shall report the amount due each claimant, at the commencement of each session, to the Speaker of the House of Representatives, who shall lay the same before Congress for consideration: *Provided,* That nothing in this section shall be construed to authorize the reexamination and payment of any claim or account which has been once examined and rejected, unless reopened in accordance with existing law. (June 14, 1878, c. 191, § 4, 20 Stat. 115; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—The language of the second sentence of this section should probably be changed to conform to that of section 266 of Title 5, Executive Departments and Government Officers and Employees.

Historical Note

This section was part of the deficiency appropriation act of June 14, 1878, cited to the text.

A portion of the original text, omitted here, repealed part of Act June 20, 1874, § 5, 18 Stat. 110.

Upon incorporation into the Code, the words "the General Accounting Office" were substituted for "the several accounting officers of the Treasury" to conform to section 44 of this title.

§ 715. Same; certification as to pending claims. All balances of appropriations which shall have remained on the books of the Treasury, without being drawn against in the settlement of accounts, for two years from the date of the last appropriation made by law, shall be reported by the Secretary of the Treasury to the General Accounting Office, the proper officer of which shall examine the books of such office, and certify to the Secretary whether such balances will be required in the settlement of any accounts pending in such office; and if it appears that such balances will not be required for this purpose, then the Secretary may include such balances in his surplus-fund warrant, whether the head of the proper department shall have certified that it may be carried into the general Treasury or not. But no appropriation for the payment of the interest or principal of the public debt, or to which a longer duration is given by law, shall be thus treated. (R. S. § 3691; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Historical Note

This is R. S. § 3691, which was derived from Act July 12, 1870, c. 251, § 6, 16 Stat. 251.

Upon incorporation into the Code, references to the Auditor whose duty it was to settle accounts, were made to refer to the General Accounting Office to conform to section 44 of this title.

The Secretary of the Treasury was required to carry to the surplus fund and cover into the Treasury all unexpended balances of appropriations which remained on the books July 1, 1904, except permanent specific appropriations, judgments and findings of courts, trust funds, and appropriations for fulfilling treaty obligations with the Indians, and also except such sums as were needed to pay existing contracts, with a proviso that no appropriation made prior to July 1, 1904, should be construed to be a permanent specific appropriation unless specifically made available until expended, by Act March 4, 1909, c. 299, § 10, 35 Stat. 1027. The provisions of said Act were not to be construed as applying to the unexpended balance of any river and harbor appropriation the use of which was essential for the maintenance or prosecution of the work to which it pertained by Res. June 25, 1909, No. 3, 36 Stat. 183.

Cross-References

The provisions of this section are made applicable to appropriations for the National Home for Disabled Volunteer Soldiers, by section 719 of this title.

Notes of Decisions

1. Salary and compensation.—See Parshall v. U. S. (Mo. 1906) 147 F. 433, 77 C. C. A. 457.

§ 716. Same; for pay of Navy or Marine Corps. All balances of moneys appropriated for the pay of the Navy or pay of the Marine Corps, for any year existing after the accounts for said year shall have been settled shall be covered into the Treasury. (July 26, 1886, c. 781, § 2, 24 Stat. 157.)

Historical Note

This section was part of the naval appropriation act for the fiscal year 1887, cited to the text.

Cross-References

See sections 713 and 718 of this title.

§ 717. Same; reappropriation to other purpose construed as new appropriation. The reappropriation and diversion of the unexpended balance of any appropriation to a purpose other than that for which it was originally made shall be construed and accounted as a new appropriation and the unexpended balance shall be reduced by the sum proposed to be so diverted. (Mar. 4, 1915, c. 147, § 4, 38 Stat. 1161.)

Historical Note

This was a provision of the deficiency appropriation act for the fiscal year 1916, cited to the text.

§ 718. Appropriations in annual appropriation Acts not permanent. No specific or indefinite appropriation made subsequent to August 24, 1912, in any regular annual appropriation Act shall be construed to be permanent or available continuously without reference to a fiscal year unless it belongs to one of the following four classes: "Rivers and harbors," "lighthouses," "public buildings," and "pay of the Navy and Marine Corps," last specifically named in and excepted from the operation of the provisions of section 713 of this title, or unless it is made in terms expressly providing that it shall continue available beyond the fiscal year for which the appropriation Act in which it is contained makes provision. (Aug. 24, 1912, c. 355, § 7, 37 Stat. 487; Mar. 3, 1919, c. 99, § 6, 40 Stat. 1309.)

Historical Note

This section is Act Aug. 24, 1912, c. 355, § 7, cited to the text, as modified by Act March 3, 1919, c. 99, § 6, also cited to the text, which repealed so much of section 7 of the Act of 1912 as excepted appropriations for fortifications from its operations.

Cross-References

See sections 713 and 716 of this title.

Notes of Decisions

1. **Permanent and indefinite appropriations distinguished.**—Permanent appropriations are those made for an unlimited period; indefinite appropriations are those in which no amount is named. (1870) 13 Op. Atty. Gen. 289.

§ 719. Unexpended balances for National Home for Disabled Volunteer Soldiers. The provisions of sections 712 and 715 of this title shall apply to all appropriations made for the maintenance of the National Home for Disabled Volunteer Soldiers: *Provided,* That it shall be the duty of the managers of said home, on or before the 1st day of October in each year, to furnish to the Secretary of War estimates, in detail, for the support of said home for the fiscal year commencing on the 1st day of July thereafter, and the Secretary of War

shall annually include such estimates in his estimates for his department. (Oct. 2, 1888, c. 1069, 25 Stat. 543.)

Editorial comment.—The words "on or before the 1st day of October" may be superseded by sections 22 and 23 of this title.

Historical Note

This was a provision following an appropriation for the National Home for Disabled Volunteer Soldiers in the sundry civil appropriation act for the fiscal year 1889, cited to the text.

A permanent appropriation for the support of the Home was made by R. S. § 3689, but was repealed by a provision of Act March 3, 1875, c. 129, § 1, 18 Stat. 359.

Cross-References

Appropriations for the construction of buildings at any of the branches of the National Home for Disabled Volunteer Soldiers, continue available until expended under section 114 of Title 24, Hospitals, Asylums, and Cemeteries.

As to statement of expenses to be submitted each year in the annual Budget, see section 123 of Title 24, Hospitals, Asylums, and Cemeteries.

§ 720. Proceeds of sales of material. All moneys received from the leasing or sale of marine hospitals, or the sale of Coast Guard cutters, or from the sale of commissary stores to the officers and enlisted men of the Army, or from the sale of materials, stores, or supplies sold to officers and soldiers of the Army, or from sales of condemned clothing of the Navy, or from sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall respectively revert to that appropriation out of which they were originally expended, and shall be applied to the purposes for which they are appropriated by law. (R. S. § 3692; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249; Jan. 28, 1915, c. 20, § 1, 38 Stat. 800.)

Editorial comment.—It has been suggested that the words "Except as provided in section 489 of this title" should be inserted at the beginning of this section.

Historical Note

This is R. S. § 3692 (Act March 3, 1847, c. 48, § 1, 9 Stat. 171; Act April 20, 1866, c. 63, §§ 1, 2, 14 Stat. 40; Act July 28, 1866, c. 299, § 25, 14 Stat. 336; Act May 8, 1872, c. 140, § 5, 17 Stat. 83; Act June 8, 1872, c. 348, 17 Stat. 337) as amended by Act Feb. 27, 1877, c. 69, § 1, cited to the text.

The amendment consisted of the insertion of the words "or from the sale of materials, stores, or supplies sold to officers and soldiers of the Army."

Upon incorporation into the Code, the words "Coast Guard cutters" were evidently substituted for "revenue cutters" to conform to Act Jan. 28, 1915, c. 20, § 1, cited to the text (section 1 of Title 14, Coast Guard).

Cross-References

Proceeds of sales of subsistence supplies are exempt from being covered into the Treasury, and are immediately available for the purchase of fresh supplies, under section 1196 of Title 10, Army.

Provisions for the leasing or sale of marine hospitals are made by section 7 of Title 24, Hospitals, Asylums, and Cemeteries; for the sale of Coast Guard cutters, by section 69 of Title 14, Coast Guard; for sale of commissary stores, etc., or supplies to officers and enlisted men of the Army, by sections 1196 and 1232 of Title 10, Army, and R. S. §§ 1144, 1149, set out in notes to section 875 of Title 10.

Notes of Decisions

1. **Sale of public property.**—The Isthmian Canal Commission having finished its work, its president had authority, under the direction or with the approval of the President of the United States, to sell, as favorably as possible, material, supplies, and equipments, which had been purchased for, and had been made use of by, the commission, and which could not, to advantage, be brought to the United States. (1900) 23 Op. Atty.-Gen. 163.

§ 721. Payments of appropriations for charitable purposes. All moneys appropriated for the aid, use, support, or benefit of any

charitable, industrial, or other association, institution, or corporation, shall be placed to the credit of the proper fiscal officer of such association, institution, or corporation, by warrant of the Secretary of the Treasury, on the books of the Treasurer of the United States, or a designated depositary of the United States other than a national bank, and shall be paid out only on the checks of such fiscal officer, drawn payable to the order of the person to whom payment is to be made, for services, materials, or any other purpose, and stating in writing thereon the specific object or purpose to which the avails thereof are to be applied: *Provided*, That when payments are to be made under $20, such fiscal officer may check in his own name, but shall state in writing on the check that the avails thereof are to be applied to the payment of small claims, and shall furnish, to the Treasurer, or designated depositary on whom the check is drawn, a certified list of such claims, which list shall set forth the amount and nature of each claim and the name of each claimant. (June 23, 1874, c. 455, § 1, 18 Stat. 216.)

Historical Note

This was a provision following appropriations for hospitals, etc., in the sundry civil appropriation act for the fiscal year 1875, cited to the text.

Upon incorporation into the Code, references to the assistant treasurers were evidently omitted as superseded by Act May 29, 1920, c. 214, § 1, 41 Stat. 654, abolishing the offices of the assistant treasurers.

§ 722. Term of service of Members of Congress as trustees or directors of corporations or institutions appropriated for. In all cases where Members of Congress or Senators are appointed to represent Congress on any board of trustees or board of directors of any corporation or institution to which Congress makes any appropriation, the term of said Members or Senators, as such trustee or director, shall continue until the expiration of two months after the first meeting of the Congress chosen next after their appointment. (Mar. 3, 1893, c. 199, § 1, 27 Stat. 553.)

Historical Note

This was a provision of the District of Columbia appropriation act for the fiscal year 1894, cited to the text.

CHAPTER 12.—THE PUBLIC DEBT

Sec.
731. Payment in coin.
732. Interest; payment.
733. Same; anticipation.
734. Purchase of coin.
735. Destroyed bonds; duplicates.
736. Same; indemnity for.
737. Lost registered bond; duplicate for.
738. Same; indemnity for.
739. Exchange of coupon for registered bonds.
740. Credit to officers for stolen notes.
741. Purchase or redemption of bonds.
742. Exemption from taxation.
743. Panama Canal bonds to have rights and privileges of other bonds.
744. Redemption, payment, and exemption from taxes of Panama Canal bonds.
745. Payment, interest, and exemption from taxes of Panama Canal bonds.
746. Payment, interest, exemption from taxes, etc., of First Liberty bonds.
747. Tax exemption; second and subsequent Liberty loans.
748. Additional Liberty bond tax exemptions.
749. First, second, third, and fourth Liberty loans; bonds; exemption from taxation.
750. Bonds and certificates of indebtedness beneficially owned by nonresident aliens not engaged in business in United States exempt from taxation.
751. Consols of 1930, interest, payment, exemption from taxes.

Sec.
752. Second, third, and fourth Liberty loans; amount; bonds.
753. United States notes.
(a) Authority to issue; amount; forms and denominations; interest; payment and redemption.
(b) Series; exemptions.
(c) Conversion into other series.
(d) No circulation privileges; payment in gold coin; "bond" or "bonds" defined.
754. Second and third Liberty loans; additional loans; certificates of indebtedness.
755. First Liberty loan; certificates of indebtedness.
756. Loans to meet public expenditures; certificates of indebtedness; limitation; counterfeiting.
757. Second and third Liberty loans; additional loans; war-savings certificates.
758. Bonds and certificates not to bear circulation privilege.
759. First Liberty loan; appropriation to pay expenses.
760. Second and third Liberty loans; appropriation to pay expenses of issue of bonds; report of expenditures.
761. Appropriations for expense available for subsequent public debt issues.
762. Expenses of sale and distribution of war-savings and thrift stamps.
763. First and second Liberty loans; bonds; conversion into bonds bearing higher interest rate; extension of time for.
764. Use of proceeds; exchange of bonds.
765. Bonds receivable in payment of estate or inheritance taxes.
766. Bonds or certificates payable in foreign money.
767. Sinking fund for retirement of Liberty bonds and notes.
768. Bonds and certificates of indebtedness payable in gold coin.
769. Certificates of indebtedness; taxation; expense of issue.
770. Certain bonds not receivable as security for national bank circulating notes.
771. Deposit of proceeds of sales of Liberty bonds, certificates of indebtedness, and war-savings certificates.
772. Fiscal agents.
773. Performance of services by postal employees in connection with bonds, etc.
774. Short title of Acts.

OBLIGATIONS OF FOREIGN GOVERNMENTS

801. Conversion into obligations bearing higher interest rate; sale of obligations; redemption of United States bonds.
802. Conversion of short-time obligations of foreign governments into long-time obligations; interest; payment of obligations.
803. Maturity of obligations of foreign governments.
804. Payment before maturity or sale of obligations of foreign governments.
805. World War Foreign Debt Commission; members; appointment.
806. Powers of commission as to refunding, conversion, or extension of time of payment of obligations of foreign governments.
807. Exchange of bonds or obligations or cancellation of obligations not authorized.
808. Termination of authority granted.
809. Annual report of commission; copies of refunding agreements for Congress.

Cross-References

Bonds bearing circulation privilege; see Title 12, Banks and Banking. Postal-savings bonds; see chapter 20 of Title 39, The Postal Service. Refunding bonds; see Title 12, Banks and Banking.

Section 731. Payment in coin. The faith of the United States is solemnly pledged to the payment in coin or its equivalent of all the obligations of the United States not bearing interest, known as United States notes, and of all the interest-bearing obligations of the United States, except in cases where the law authorizing the issue of any such obligations has expressly provided that the same may be paid in lawful money or other currency than gold and silver. But none of the interest-bearing obligations not already due shall be redeemed or paid before maturity, unless at such time United States notes are convertible into coin at the option of the holder, or unless at such time bonds of the United States bearing a lower rate of interest than the bonds to be redeemed can be sold at par in coin. (R. S. § 3693.)

Historical Note

This section of the Revised Statutes was derived from Act March 18, 1869, c. 1, 16 Stat. 1.

Prior to its incorporation into the Code it contained a further provision pledging the faith of the United States to make provisions at the earliest practicable period for the redemption of the United States notes in coin. It was probably omitted as superseded by section 408 of this title.

R. S. § 3694, provided that coin paid for duties on imported goods should be set apart as a special fund and be applied first to the payment of the interest on bonds and notes of the United States, and second, to the purchase or payment yearly of one per centum of the entire debt, to be set apart as a sinking fund and the interest applied to the purchase or payment of the public debt, and that the residue should be paid into the Treasury.

R. S. § 3695 made provision for the cancellation and destruction of bonds applied to the sinking fund, or redeemed or paid.

R. S. § 3696 provided that an amount equal to the interest on all bonds belonging to the sinking fund should be applied to the payment of the public debt.

These sections (R. S. §§ 3694–3696) were repealed by Act March 3, 1919, c. 100, § 6(b), 40 Stat. 1312.

R. S. § 3697 authorized the Secretary of the Treasury to redeem the 6 per cent. bonds, known as the five-twenty bonds, which had become or should thereafter become redeemable by the terms of their issue. It has become obsolete.

Cross-References

Provisions relating to United States notes, Treasury notes, etc., are contained in chapter 8 of this title.

Provisions for maintaining the parity of all forms of money issued or coined by the United States with the gold dollar, as the standard unit of value, are made by sections 408 and 409 of this title.

Provisions for payment in United States gold coin of the existing standard of value, of bonds and certificates of indebtedness of the United States are contained in sections 751 and 768 of this title.

Notes of Decisions

1. **R. S. § 3696 (repealed).**—See Morgan v. U. S. (Ct. Cl. 1885) 113 U. S. 476, 5 S. Ct. 588, 28 L. Ed. 1044; Stewart v. Henry County (C. C. Mo. 1895) 66 F. 127; L. Von Hoffman v. U. S. (1883) 18 Ct. Cl. 386, reversed (1885) 5 S. Ct. 588, 113 U. S. 476, 28 L. Ed. 1044; Brown, Riley & Co. v. U. S. (1885) 20 Ct. Cl. 416.

2. **R. S. § 3697 (obsolete).**—R. S. sec. 3697 (obsolete) was merely an Act providing for redemption in contradistinction from a payment. Morgan v. U. S. (Ct. Cl. 1885) 113 U. S. 476, 5 S. Ct. 588, 28 L. Ed. 1044; Stewart v. Henry County (C. C. Mo. 1895) 66 F. 127.

3. **—— Notice of redemption.**—See Stewart v. Henry County (C. C. Mo. 1895) 66 F. 127.

4. **—— Effect of call for redemption.**—See Morgan v. U. S. (1885) 113 U. S. 476, 5 S. Ct. 588, 28 L. Ed. 1044, reversing (1883) 18 Ct. Cl. 386.

§ 732. Interest; payment. The Secretary of the Treasury shall cause to be paid, out of any money in the Treasury not otherwise appropriated, any interest falling due, or accruing, on any portion of the public debt authorized by law. (R. S. § 3698.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 9, 1847, c. 7, 9 Stat. 123.

Cross-References

A permanent appropriation for payment of interest on the public debt is made by paragraph 2 of section 711 of this title.

Notes of Decisions

1. **Taxation of checks in payment of interest.**—United States treasury checks or orders issued under this section for interest accrued upon registered bonds of the United States where intended for immediate payment may be taxed by the state in the hands of the owner without violating section 742 of this title, exempting obligations of the United States from taxation. Hibernia Savings & Loan Society v. City and County of San Francisco (Cal. 1906) 26 S. Ct. 265, 266, 200 U. S. 310, 50 L. Ed. 495, 4 Ann. Cas. 934.

§ 733. Same; anticipation. The Secretary of the Treasury may anticipate the payment of interest on the public debt, by a period not exceeding one year, from time to time, either with or without a rebate of interest upon the coupons, as to him may seem expedient; and he is authorized to dispose of any gold in the Treasury of the United States, not necessary for the payment of interest of the public debt. The obligation to create the sinking fund shall not, however, be impaired thereby. (R. S. § 3699.)

Editorial comment.—The second clause of the first sentence, authorizing the Secretary to dispose of gold not needed for the payment of interest, needs qualification to avoid conflict with section 408 of this title. Perhaps this could be done by adding thereto the words "or for the purposes of section 408 of this title."

Historical Note

This section of the Revised Statutes was derived from Res. No. 20 of March 17, 1864, 13 Stat. 404.

Notes of Decisions

1. Disposal of gold.—The Secretary of the Treasury has authority, under this section to fix a currency price for disposing of gold within a limited period, subject to his power at any time to terminate the period for which the limit was made, or to change such price so as to conform to the market rate. His authority to dispose of the gold is subject to no limitation as to amount, except that which is imposed by the same section. (1877) 15 Op. Atty. Gen. 413.

§ 734. Purchase of coin. The Secretary of the Treasury may purchase coin with any of the bonds or notes of the United States, authorized by law, at such rates and upon such terms as he may deem most advantageous to the public interest. (R. S. § 3700.)

Historical Note

This section of the Revised Statutes was derived from Act March 17, 1862, c. 45, § 1, 12 Stat. 370.

§ 735. Destroyed bonds; duplicates. Whenever it appears to the Secretary of the Treasury, by clear and unequivocal proof, that any interest-bearing bond of the United States has, without bad faith upon the part of the owner, been destroyed, wholly or in part, or so defaced as to impair its value to the owner, and such bond is identified by number and description, the Secretary of the Treasury shall, under such regulations and with such restrictions as to time and retention for security or otherwise as he may prescribe, issue a duplicate thereof, having the same time to run, bearing like interest as the bond so proved to have been destroyed or defaced, and so marked as to show the original number of the bond destroyed and the date thereof. But when such destroyed or defaced bonds appear to have been of such a class or series as has been or may, before such application, be called in for redemption, instead of issuing duplicates thereof, they shall be paid, with such interest only as would have been paid if they had been presented in accordance with such call. (R. S. § 3702.)

Historical Note

This section of the Revised Statutes was derived from Act June 1, 1872, c. 254, § 1, 17 Stat. 196.

Notes of Decisions

1. Authority in general.—The language of the first clause limits the authority thereby conferred to the mere issuing of duplicate bonds in the cases mentioned. The second clause is not more comprehensive than the other, but has precisely

the same scope in respect to the subject-matter of relief; in other words, it extends solely to destroyed or defaced interest-bearing bonds. The mode of relief only is varied thereby in cases where such bonds are of a class or series already called in for redemption. (1878) 15 Op. Atty. Gen. 438.

While the provisions of this section were enacted with a view to enable persons who may sustain loss by the destruction or damage of government securities to obtain relief without resorting to Congress for special legislation, the authority conferred upon the secretary of the treasury by the section to afford relief must nevertheless be exercised in strict conformity with those provisions. He is not at liberty to give relief in the modes which do not fairly come within the terms of the statute. Id.

2. Stolen bonds.—This statute does not apply to stolen bonds. State Savings Bank of Ortley v. U. S. (1924) 59 Ct. Cl. 621.

3. Coupons.—This section does not authorize relief to be given in the case of coupons destroyed or defaced after their separation from the bonds to which they were attached. Its provisions apply solely to destroyed or defaced interest-bearing bonds. (1878) 15 Op. Atty. Gen. 439.

Coupons, whilst remaining attached to the bonds with which they were issued, are to be regarded as parts thereof, and if then defaced or destroyed, the case would fall within the section as one of partial defacement or destruction of the bond. But they lose that character after being detached. Id.

4. Bonds of District of Columbia.—Bonds issued by the District of Columbia under the Acts of Congress of June 20, 1874, and February 20, 1875 (18 Stat. 116, 332), are considered bonds of the United States within the meaning of this section and section 738 of this title. (1920) 32 Op. Atty. Gen. 166.

5. Coupon bonds of Liberty loan.—The Secretary of the Treasury is justified in issuing duplicates of destroyed coupon bonds of the Fourth Liberty loan, provided he is satisfied of the sufficiency of the evidence. (1921) 33 Op. Atty. Gen. 66, wherein it was said:

"The question presented for my determination is whether the evidence of the destruction of said bonds is in compliance with the statutory provision that such evidence must be 'clear and unequivocal.'

"There is nothing in the statutes above quoted which refers either to the credibility or the sufficiency of the evidence. Section 3702, Revised Statutes [this section] provides that when 'it appears to the Secretary of the Treasury, by clear and unequivocal proof,' that the bond has been destroyed, a duplicate may be issued. It is my opinion that the sufficiency of the evidence presented under section 3702, Revised Statutes, is left to the determination of the Secretary of the Treasury.

"The evidence submitted is sworn testimony of one who, above all others, has knowledge of the disposition made of the stolen bonds. He testifies clearly and unequivocally that the bonds were destroyed by him. There is no evidence to the contrary and no equivocation apparent in his testimony.

"It is my opinion, therefore, that the evidence of the destruction of the 22 coupon bonds submitted by the Studebaker Corporation is clear and unequivocal in contemplation of the statute, and that the Secretary of the Treasury is justified in issuing duplicates of the destroyed bonds, provided he is satisfied of the sufficiency of the evidence submitted to him."

6. Sections 735 and 737 compared.—The difference between this section and section 737 of this title, is that lost registered bonds are to be replaced by duplicates whether they have been called in for redemption or not. Section 737 does not draw the distinction which appears in this section and is based upon the circumstance that a lost bond has been called in. (1878) 15 Op. Atty. Gen. 468.

7. Practice prior to statute.—For a long time it was the practice to pass special Acts of Congress authorizing the secretary of the treasury of the United States to issue, upon the conditions prescribed in the Acts, duplicate United States bonds destroyed by fire or otherwise. Finally Congress passed a general law on the subject to cover all cases of the loss or destruction of the United States bonds, which is embodied in sections 735 to 738 of this title. Without express authority to that effect conferred by an Act of Congress, the secretary of the treasury of the United States never presumed to issue duplicate United States bonds to take the place of bonds lost or destroyed, no matter how clear or satisfactory the proof of loss might be. Farmers' Nat. Bank v. Jones (C. C. Ark. 1900) 105 F. 459.

§ 736. Same; indemnity for. The owner of such destroyed or defaced bond shall surrender the same, or so much thereof as may remain, and shall file in the Treasury a bond in a penal sum of double the amount of the destroyed or defaced bond, and the interest which would accrue thereon until the principal becomes due and payable,

with two good and sufficient sureties, residents of the United States, to be approved by the Secretary of the Treasury, with condition to indemnify and save harmless the United States from any claim upon such destroyed or defaced bond. (R. S. § 3703.)

Historical Note

This section of the Revised Statutes was derived from Act June 1, 1872, c. 254, § 2, 17 Stat. 196.

Notes of Decisions

1. **Sufficiency of bond.**—An indemnity bond in double the amount of destroyed coupon bonds of the Liberty loan is ample protection to the Government against loss through the issue of duplicate bonds in the place of those destroyed. (1921) 33 Op. Atty.-Gen. 66.

§ 737. Lost registered bond; duplicate for. Whenever it is proved to the Secretary of the Treasury, by clear and satisfactory evidence, that any duly registered bond of the United States, bearing interest, issued for valuable consideration in pursuance of law, has been lost or destroyed, so that the same is not held by any person as his own property, the Secretary shall issue a duplicate of such registered bond, of like amount and bearing like interest and marked in the like manner as the bond so proved to be lost or destroyed. (R. S. § 3704.)

Historical Note

This section of the Revised Statutes was derived from Res. No. 49 of March 3, 1871, 16 Stat. 600.

Notes of Decisions

1. **Bonds bearing interest.**—The phrase "bearing interest" designates the class to which the paper must belong and does not mean that interest is actually accruing at the time of application by the owner. (1878) 15 Op. Atty. Gen. 468.

2. **Effect of call for redemption.**—Under this section, as distinguished from section 735 of this title, lost registered bonds are to be replaced by duplicates whether they have been called in for redemption or not. (1878) 15 Op. Atty. Gen. 468.

3. **Assigned bonds.**—Where signature of registered owner assigning liberty bonds was not attested in compliance with the regulations of the Treasury Department, the Secretary of the Treasury, on bonds being lost, is not authorized by this section and section 738 of this title to issue duplicates. (1924) 34 Op. Atty. Gen. 262.

Registered government bonds assigned in blank are payable to bearer and lack the protection of registration and when lost or stolen from the possession of their rightful owner duplicates therefor may not be issued by the Secretary of the Treasury. Id.

§ 738. Same; indemnity for. The owner of such missing bond shall first file in the Treasury a bond in a penal sum equal to the amount of such missing bond, and the interest which would accrue thereon, until the principal thereof becomes due and payable, with two good and sufficient sureties, residents of the United States, to be approved by the Secretary of the Treasury, with condition to indemnify and save harmless the United States from any claim because of the lost or destroyed bond. (R. S. § 3705.)

Historical Note

This section of the Revised Statutes was derived from Res. No. 49 of March 3, 1871, 16 Stat. 600.

Notes of Decisions

1. **Right to payment.**—Where satisfactory proof is furnished that a registered bond, called in for redemption, has been lost, payment thereof may be made upon a bond of indemnity being given by the owner, in conformity with the requirements of this section. (1878) 15 Op. Atty. Gen. 468.

2. **Duplicates of assigned bonds.**—See (1924) 34 Op. Atty. Gen. 262, and notes to section 737 of this title.

§ 739. Exchange of coupon for registered bonds. The Secretary of the Treasury is hereby authorized to issue, upon such terms and under such regulations as he may from time to time prescribe, registered bonds in exchange for and in lieu of any coupon bonds which have been or may be lawfully issued; such registered bonds to be similar in all respects to the registered bonds issued under the Acts authorizing the issue of the coupon bonds offered for exchange. (R. S. § 3706.)

Historical Note

This section of the Revised Statutes was derived from Act June 30, 1864, c. 172, § 7, 13 Stat. 220.

§ 740. Credit to officers for stolen notes. When any officer or agent duly authorized to receive, redeem, or cancel any Treasury notes issued by authority of law, shall receive, or pay, any Treasury note which has been previously received or redeemed by any officer or agent having authority to receive or redeem such note, and which has subsequently thereto been purloined and put into circulation, the Secretary of the Treasury, upon full and satisfactory proof that the same has been received or paid in good faith, and in the exercise of ordinary prudence, may allow a credit for the amount of such note, to the officer or agent so receiving or paying the same. (R. S. § 3707.)

Historical Note

This section of the Revised Statutes was derived from Act Aug. 10, 1846, c. 180, § 2, 9 Stat. 107.

§ 741. Purchase or redemption of bonds. The Secretary of the Treasury may at any time apply the surplus money in the Treasury not otherwise appropriated, or so much thereof as he may consider proper, to the purchase or redemption of the United States bonds: *Provided,* That the bonds so purchased or redeemed shall constitute no part of the sinking fund, but shall be canceled. (Mar. 3, 1881, c. 133, § 2, 21 Stat. 457.)

Historical Note

This section known as the "Bond Purchase Clause" was part of the sundry civil appropriation act for the fiscal year 1882, cited to the text.

Notes of Decisions

1. **Amount to be purchased.**—"The only express limitation to the exercise of the power to purchase conferred by this section is that the amount to be applied in the purchase or redemption of the bonds srall not at any time or in any event exceed the surplus in the treasury not otherwise appropriated. Within this maximum amount it confers on the secretary an official discretion to purchase or redeem from time to time whatever amounts may to him seem to be for the best interests of the United States." (1889) 19 Op. Atty. Gen. 279.

2. **Redemption.**—In calling for redemption the new bonds issued by the Secretary of the Treasury, known as "continued fives," those which have the highest number, i. e., "the bonds of each class last dated and numbered," as provided by the third section of the act of July 14, 1870 (16 Stat. 272), should be called first. (1882) 17 Op. Atty. Gen. 349.

Section 3 of the act of July 14, 1870 (16 Stat. 272), by taking away all authority from the Secretary of the Treasury to pay further interest after three months from public notice given of his intention to redeem certain of the bonds issued under that act, makes it imperative upon him to pay all of the bonds designated in the notice. (1891) 20 Op. Atty. Gen. 127.

Suggested that the precedent established in the case of the 5 per cent. bonds might be followed and a statement be appended to the notice to the effect that if within defined limits some holders of the 4½ per cent. bonds requested to have them continued during the pleasure of

the government at 3½ per cent. interest, such request will be granted provided they are deposited before a certain day. Id.

3. Discretion of secretary.—"The intent of the law is that the exercise of the discretion should generally be dependent upon the state of the market as a chief element. Keeping this in view, the discretion was not intended to be so rigorously limited as to prevent purchases even though the market price by reason of such purchases or other natural cause might rise, or even in special emergencies, when a general financial crisis could be avoided or stayed by a moderate advance above the then market values. But the policy of the government generally applicable in its purchases is to buy in a free and open market where all sellers of the commodity can readily compete and where the government can have the benefit of such competition. This policy should be recognized in the exercise of the power." (1889) 19 Op. Atty.-Gen. 279.

4. Commissions on government purchases.—The power given the Secretary of the Treasury by this section, to purchase United States bonds with the surplus money in the Treasury not otherwise appropriated, does not include the payment of commissions to private parties to purchase for the Government. (1889) 19 Op. Atty. Gen. 279.

Only the market price of the bonds at the time of the purchase should be paid; no commissions in addition to the par value of the bond and the premium thereon can be lawfully paid. Id.

5. Contracts for future delivery.—The power conferred by the statute does not extend to the making of contracts for future delivery, but is limited to actual cash purchases. (1889) 19 Op. Atty. Gen. 279, 281.

6. Redemption of bonds or notes registered in name of infant.—Where United States bonds and notes are registered in the name of an infant, payment thereof by the Government to a duly appointed, qualified, and acting guardian of such infant, and the execution of proper releases and assignments by such guardian in his official capacity, and the assignment for redemption of such bonds and notes by such guardian, will fully protect the Government from further liability thereon. Where such bonds and notes are owned by an infant but are registered in the name of a natural guardian for the infant, payment thereof by the Government to the designated payee and the execution by him of proper releases and assignments will fully protect the Government. Where such bonds and notes are owned by and registered in the name of an infant, the assignment thereof for redemption by such infant, even though the natural guardian should join in the execution of the assignment, would not protect the Government from liability in making payment to such infant. (1922) 33 Op. Atty. Gen. 197. To the same effect see (1922) 33 Op. Atty.-Gen. 207. The conclusion expressed in the above opinion with reference to the proper method of assignment for transfer or surrender of registered bonds or notes registered in the name of an infant or a natural guardian for an infant, are fully applicable to the transfer of Victory notes in exchange for Treasury notes of Series B-1925 or for optional redemption before maturity. (1922) 33 Op. Atty.-Gen. 366.

§ 742. Exemption from taxation. Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. (R. S. § 3701.)

Historical Note

This section of the Revised Statutes was derived from Act Feb. 25, 1862, c. 33, § 2, 12 Stat. 346; Act March 3, 1863, c. 73, § 1, 12 Stat. 710; Act March 3, 1864, c. 17, § 1, 13 Stat. 13; Act June 30, 1864, c. 172, § 1, 13 Stat. 218; Act Jan. 28, 1865, c. 22, § 1, 13 Stat. 425; Act March 3, 1865, c. 77, § 2, 13 Stat. 469; Act July 14, 1870, c. 256, § 1, 16 Stat. 272.

Cross-References

Circulating notes of national banks, and United States legal tender notes, and other notes and certificates of the United States payable on demand, are made subject to taxation as money on hand or on deposit under the laws of any State or Territory by section 425 of this title.

Notes of Decisions

1. Validity of section.
2. Validity of state laws.
3. Taxability in general.
4. Securities exempt.
5. —— Stocks and bonds.
6. —— Treasury notes, legal tender notes, and other currency.
7. —— National bank notes.
8. Certificates of indebtedness.
9. Money borrowed on government securities.
10. Interest and income from exempt securities.
11. Debts due from United States.

12. Exempt securities held by corporations as affecting taxation—Valuation of corporate stock.
13. —— Capital invested in exempt securities.
14. —— Taxability of corporation upon capital stock.
15. —— Franchise taxes.

1. Validity of section.—Congress cannot withdraw from state taxation securities issued by the United States already subject to such taxation, and Act Feb. 25, 1862 (incorporated in this section) so far as it exempts from state taxation United States securities previously issued, is extra-constitutionally void. People v. City and County of New York Com'rs of Taxes and Assessments (N. Y. 1862) 37 Barb. 635.

2. Validity of state laws.—The portion of Gen. St. 1915, § 11163, which provides that where United States bonds have been purchased during the year preceding March 1, a sum shall be listed for taxation as money on hand March 1, computed by dividing the value of the bonds by twelve, and multiplying the quotient by the number of months of the year remaining after deducting the time the bonds were owned, violates the federal statute exempting bonds of the federal government from state taxation. Lantz v. Hanna (1922) 207 P. 767, 111 Kan. 461.

R. S. Tex. art. 4764, providing for deduction from an insurance company's assets of the value of its real estate, the remainder to be the assessed taxable value of its personal property, if so construed as to make it possible to have United States bonds exempt from taxation under this section, in the remainder which is declared to be the assessed taxable value of the company's personal property, would be invalid to that extent; therefore, if it is possible to give it such construction as to avoid a conflict with the federal statutes, it is the court's duty to do so. City of Waco v. Texas Life Ins. Co. (Tex. Com. App. 1923) 248 S. W. 315, affirming (Civ. App. 1921) 228 S. W. 245.

3. Taxability in general.—"From the time when McCulloch v. Maryland [1819] 4 Wheat. 316, 4 L. Ed. 579, was decided, an unbroken line of cases adopting the principles of that decision, has established the inherent nontaxability by the states of property held by the United States, and of boards and obligations issued by the United States and held by individuals or corporations, except by permission of the United States." Howard Sav. Inst. v. Newark (1899) 63 N. J. Law, 547, 44 A. 654.

"The principle of exemption is that the states cannot control the national government within the sphere of its constitutional powers—for there it is supreme—and cannot tax its obligations for payment of money issued for purposes within that range of powers, because such taxation necessarily implies the assertion of the right to exercise such control." New York v. Connelly (N. Y. 1869) 7 Wall. 16, 19 L. Ed. 57.

The exemption cannot be evaded by any mere change of form or name in the law by which the tax is imposed. If in fact the tax is laid upon government obligations or securities, then, by whatever form of words the imposition is laid, it is illegal. Monroe County Sav. Bank v. Rochester (1867) 37 N. Y. 365.

The principle is, that whenever, by state law, a tax is laid upon property which consists of United States bonds, exempt from taxation, then, in whatever form, or in whatever terms, the law is expressed, it is void, and cannot be enforced. Id.

4. Securities exempt.—The act of congress (this section) exempting from state taxation United States securities did not apply to such securities held before the passage of the act. Bank of Commerce v. City and County of New York (N. Y. 1863) 67 U. S. (2 Black) 620, 17 L. Ed. 451, reversing (1863) 26 N. Y. 163; People v. Commissioners of Taxes and Assessments (N. Y. 1862) 37 Barb. 635.

A state statute requiring the taxpayer to return to the assessor a statement of the monthly average, amount, or value, for the time he held or controlled the same, within the preceding year, of all moneys, credits or other effects within that time invested in government securities, but not deducting any indebtedness created in the purchase of such securities, does not tax the citizen for greenbacks or other United States securities he may have held during the year, and is not in conflict with this section. Shotwell v. Moore (Ohio, 1889) 129 U. S. 590, 593, 9 S. Ct. 362, 32 L. Ed. 827, affirming (1888) 45 Ohio St. 632, 16 N. E. 470.

The effect of this section is that in any scheme of state or municipal taxation government bonds must be eliminated from consideration in any equation to reach the taxable property, or at least when they are included, it compels a deduction as such for the amount of the bonds. City of Waco v. Amicable Life Ins. Co. (Tex. Civ. App. 1921) 230 S. W. 698, affirmed (Com. App. 1923) 248 S. W. 332.

Checks or orders of the treasurer of the United States payable on demand are not within the reason and scope of the rule forbidding such taxation by the states as may tend to destroy the powers of the national government or impair their efficiency. Hibernia Sav., etc., Soc. v. San Francisco (1903) 139 Cal. 205, 72 P. 920, 96 A. S. R. 100, 5 L. R. A. (N. S.) 608, affirmed (1906) 200 U. S. 310, 26 S. Ct. 265, 50 L. Ed. 495, 4 Ann. Cas. 934.

The words "and other obligations" read

in connection with the context "stocks, bonds, treasury notes" include only obligations of the government similar in character to those specifically named and given under the general power to borrow money on the credit of the United States, and to issue and return therefor obligations in any appropriate form, and they do not include checks given in payment of such obligations. Id.

5. —— **Stocks and bonds.**—Congress has power to declare that bonds issued by the United States shall not be taxable by a state. Newark City Bank v. Assessor of Fourth Ward of City of Newark (1862) 30 N. J. Law (1 Vroom) 13.

Stock and securities issued by the United States under the power to borrow money are exempt from taxation. Weston v. City of Charleston (S. C. 1829) 27 U. S. (2 Pet.) 449, 7 L. Ed. 481; Bank of Commerce v. City and County of New York (N. Y. 1863) 67 U. S. (2 Black) 620, 17 L. Ed. 451; Bank of Commonwealth v. Commissioner of Taxes (1863) 2 Black (67 U. S.) 635 (note), 17 L. Ed. 456, reversing (1861) 23 N. Y. 192; Hamilton Mfg. Co. v. Massachusetts (Mass. 1868) 6 Wall. 632, 639, 18 L. Ed. 904; New York ex rel. N. Y. Nat. Bkg. Ass'n v. Connelly (N. Y. 1869) 7 Wall. 16, 23, 19 L. Ed. 57; Carroll v. Perry (C. C. Mich. 1845) Fed. Cas. No. 2,456; First Nat. Bank v. Board of Equalization of Independence County (1909) 122 S. W. 988, 91 Ark. 335; City of Madison v. Whitney (1863) 21 Ind. 261; Commonwealth v. Morrison (1819) 9 Ky. (2 A. K. Marsh.) 75; Newark City Bank v. Assessor of Fourth Ward of City of Newark (1862) 30 N. J. Law (1 Vroom) 13; People v. Commissioners of Taxes and Assessments for City and County of New York (N. Y 1863) 25 How. Prac. 9; Monroe County Sav. Bank v. City of Rochester (1867) 37 N. Y. 365; People v. Board of Com'rs of Taxes and Assessments for City and County of New York (N. Y. 1870) 41 How. Prac. 459; City of Pittsburgh v. First Nat. Bank (1867) 55 Pa. (5 P. F. Smith) 45. But a tax imposed by a city council on stock obligations of the United States has been held not repugnant to the federal constitution. Weston v. City Council of Charleston (S. C. 1824) Harp. 340. But it has been held that stocks and bonds of the United States owned by a resident of the state are liable with other personal estate to state taxation, unless exempted by act of congress. People v. Commissioners of Taxes and Assessments of City and County of New York (N. Y. 1862) 37 Barb. 635.

Under Act July 14, 1870, c. 256 (incorporated in part in this section), providing for the issue of United States bonds, "all of which several classes of bonds and the interest thereon shall be exempt from the payment of all taxes and dues of the United States, as well as from taxation in any form by or under state, municipal or local authority," and Gen. Laws R. I. c. 44, § 2, exempting from taxation "the bonds and other securities issued and exempted from taxation by the government of the United States," the exemption covers "bonds" and every incident thereto, including premiums above par which such bonds command in the market. People v. Commissioners of Taxes and Assessments in City of New York (1882) 90 N. Y. 63; Rhode Island Hospital Trust Co. v. Armington (1898) 41 A. 570, 21 R. I. 33.

In the exemption, under the acts of 1862 and 1863 (incorporated in part in this section) of United States bonds from state taxes, their par value, instead of their market value, may be deducted from the personal estate. People v. Commissioners of Taxes and Assessments (1879) 76 N. Y. 64.

6. —— **Treasury notes, legal tender notes, and other currency.**—United States notes issued under the loan and currency acts of 1862 and 1863, intended to circulate as money, and actually constituting, with the national bank notes, the ordinary circulating medium of the country, are moreover, obligations of the national government, and exempt from state taxation. New York ex rel. Bank of New York v. New York County (N. Y. 1869) 7 Wall. 26, 19 L. Ed. 60, reversing People v. New York County Sup'rs (1867) 37 N. Y. 21.

Gold coin and United States treasury notes on deposit in New York City were not subject to taxation under the Alabama revenue law of 1868. Varner v. Calhoun (1872) 48 Ala. 178.

United States treasury notes, popularly known as "greenbacks," held not liable to state taxation. Board of Com'rs of Montgomery County v. Elston (1869) 32 Ind. 27, 2 Am. Rep. 327.

The foundation of the power of the federal government to exempt her treasury notes from taxation is that their sole value depends upon the promise of the government to ultimately redeem them in gold. Id.

Notes and gold and silver certificates of the United States are not taxable by or under the authority of any state, without the permission of the United States. Howard Sav. Inst. v. City of Newark (1899) 44 A. 654, 63 N. J. Law, 547, reversing (1899) 42 A. 848, 63 N. J. Law, 65.

Money in the hands of others subject to draft is a credit due a bank, and is not exempt though the money originally deposited may have been treasury notes. Griffin v. Heard (1890) 78 Tex. 607, 14 S. W. 892.

An assessment of the capital of a bank which refused to pay on the ground that its capital not invested in real estate consisted of United States legal tender notes was sustained as not invading any right secured to it by the federal constitution or laws. New Orleans Canal & Bkg. Co. v. New Orleans (La. 1879) 99 U. S. 97, 25 L. Ed. 409.

7. —— National bank notes.—Act June 30, 1864 (incorporated in part in this section) declaring that all bonds, treasury notes, and other obligations of the United States shall be exempt from state taxation, and that the words "obligation or other security of the United States" mean all bonds, national currency, United States notes, and other representations of value which may have been or may be issued under any act of congress, does not exempt the notes of national banks from state taxation. Montgomery County Com'rs v. Elston (1869) 32 Ind. 27, 2 Am. Rep. 327.

8. Certificates of indebtedness.—Certificates of indebtedness issued by the United States to creditors of the government for supplies furnished to it in carrying on the war for integrity of the Union, and by which the government promised to pay the sums of money specified in them with interest at a time named, were beyond the taxing power of the states. New York v. Connelly, 7 Wall. 16, 19 L. Ed. 57, reversing People v. Hoffman (1867) 37 N. Y. 9.

"We fail to perceive," said Chief Justice Chase, "either that there is a solid distinction between certificates of indebtedness issued for money borrowed and given to creditors and certificates of indebtedness issued directly to creditors in payment of their demands; or that such certificates, issued as a means of executing constitutional powers of the government other than of borrowing money, are not as much beyond control and limitation by the states through taxation as bonds or other obligations issued for loans of money." Id.

Certificates given by the treasurer of the United States, to secure a loan of money, are United States securities, and, as such, exempt from state taxation. Mutual Life & Casualty Ins. Co. v. Haight (1870) 34 N. J. Law (5 Vroom) 128.

But see People v. Gardiner (N. Y. 1867) 48 Barb. 608, holding that certificates of indebtedness of the United States issued pursuant to Act March 1, 1862, given in "satisfaction of audited and settled demands, and in discharge of checks drawn by disbursing officers," are not exempt from taxation by virtue of this section.

9. Money borrowed on government securities.—Though government bonds are not subject to taxation, the money or property obtained by a pledge of such bonds is subject to taxation. Hooper v. State (1904) 37 So. 662, 141 Ala. 111.

Money borrowed on government bonds is liable to taxation. People v. Assessors of Town of Flushing (1886) 3 N. Y. St. Rep. 148.

10. Interest and income from exempt securities.—United States treasury checks or orders issued for interest accrued upon registered bonds of the United States were intended for immediate payments and may be taxed by a state in the hands of the owner without violating this section. Hibernia Savings & Loan Society v. City and County of San Francisco (Cal. 1906) 26 S. Ct. 265, 266, 200 U. S. 310, 50 L. Ed. 495, 4 Ann. Cas. 934.

The act of 1867 of Kentucky, allowing a tax of 5 per cent. on the gross annual income from interest paid on bonds issued by the general government, held to be repugnant to the constitution of the United States, since such tax is a tax upon the means used by the government in the execution of its expressly delegated power "to borrow money on the credit of the United States." Bank of Kentucky v. Commonwealth (1872) 72 Ky. (9 Bush) 46.

Act N. H. July 1, 1865, entitled "An act for the taxation of incomes," is unconstitutional, in so far as it provides for the taxation of incomes derived from notes, bonds, and other securities of the United States given for loans of money to the United States. Opinion of Justices (1873) 53 N. H. 634.

Where a widow surrenders her dower interest and distributive share in her husband's estate in consideration of an annuity, taxation of such annuity does not involve the question of taxation of the property invested to produce such annuity, so as to render it a tax on government bonds invested for that purpose. Chisholm v. Shields (1900) 21 Ohio Cir. Ct. R. 231, 11 O. C. D. 361.

The interest on United States bonds is not taxable by the state, and cannot be made taxable by Acts Tenn. 1903, p. 635, c. 258, § 8, providing for the assessment of the income derived from United States bonds; nor does such interest become taxable immediately upon being paid into the hands of the bondholder. Mosely v. State (1905) 86 S. W. 714, 115 Tenn. 52.

11. Debts due from United States.—An unpaid balance of a debt owing on account from the United States on a fully performed war contract held not taxable under Greater New York Charter and Tax Law, § 12, as taxation by the state would hinder the exercise of the federal government's constitutional powers to borrow money on the credit of the United States, to declare war, and to raise and support armies; that being true, notwithstanding this section is of doubtful application. People ex rel. Astoria Light, Heat & Power Co. v. Cantor (1923) 236 N. Y. 417, 141 N. E. 901, modifying (1922) 196 N. Y. S. 944, 203 App. Div. 893, which affirmed (Sup. 1921) 187 N. Y. S. 467, 114 Misc. Rep. 419.

12. Exempt securities held by corporations as affecting taxation—Valuation of corporate stock.—A tax on the shares of stock in a trust company under Rev.

St. Ohio, § 2762, is not equivalent to a tax on the property of the corporation, and therefore the shareholders are not entitled under this section to have a deduction from the value of the shares of the amount of the capital stock of the company which is invested in United States bonds. Cleveland Trust Co. v. Lander (Ohio, 1902) 22 S. Ct. 394, 396, 184 U. S. 111, 46 L. Ed. 456, affirming (1900) 62 Ohio St. 266, 56 N. E. 1036.

United States bonds owned by a bank are property which tends to enhance the value of its capital stock, and are properly considered in determining the assessable value of its shares. National State Bank v. City of Burlington (1903) 94 N. W. 234, 119 Iowa, 696; First Nat. Bank v. City of Independence (1904) 99 N. W. 142, 123 Iowa, 482; Security Sav. Bank v. Carroll (1905) 103 N. W. 379, 128 Iowa, 230.

While it is true that United States bonds, as such, cannot be taxed by a state, it is also true that the shares of the capital stock of a corporation can be taxed at their true value, although part or the whole of such capital may be invested in such bonds. St. Louis Building & Sav. Ass'n v. Lightner (1871) 47 Mo. 393.

Where the officers of a bank furnish the assessor with the names of the shareholders, together with the amount of stock held by each, their shares should be so assessed as to cover the value of their bonds, and it will be the duty of their officers to pay the tax on behalf of the shareholders. Id.

A shareholder in a bank whose capital is invested in government securities is not a holder of such securities, and an assessment upon his shares is not an assessment of the securities held by the bank. People v. Assessors of Town of Barton (N. Y. 1861) 44 Barb. 148, 29 How. Prac. 371.

13. —— **Capital invested in exempt securities.**—A tax laid by a state "on banks, on a valuation equal to the amount of their capital stock paid in, or secured to be paid in," is a tax on the property of the institution; and, when that property consists of stocks of the federal government, the law laying the tax is void. New York v. Tax Com'rs (N. Y. 1865) 69 U. S. (2 Wall.) 200, 17 L. Ed. 793; Whitney v. City of Madison (1864) 23 Ind. 331.

Bonds of the United States held by a national bank as part of its capital cannot be taxed by the state or under its authority. Beard v. People's Savings Bank (1913) 101 N. E. 325, 53 Ind. App. 185; Old Nat. Bank v. Berkeley County Court (1905) 52 S. E. 494, 58 W. Va. 559.

A tax imposed by a law of any state, or under the authority of such a law, on stock issued for loans made to the United States, is repugnant to the constitution. Weston v. Charleston (S. C. 1829) 2 Pet. 449, 465, 7 L. Ed. 481; People v. Tax Com'rs (N. Y. 1863) 2 Black, 620, 17 L. Ed. 451.

An assessment of the capital of a bank which refused to pay on the ground that its capital not invested in real estate consisted of United States legal tender notes was sustained as not invading any right secured to it by the federal constitution or laws. New Orleans Canal & Bkg. Co. v. New Orleans (La. 1879) 99 U. S. 97, 25 L. Ed. 409.

The Alabama revenue law of 1868, exempting "all shares of the capital stock of corporations which are required to list their property for taxation," did not apply to shares of the stock of a national bank whose capital consisted mainly, if not entirely, of United States bonds, which the corporation was not required to list for taxation. McIver v. Robinson (1875) 53 Ala. 456.

Capital of a private banking firm, constantly absorbed in some form of government securities by resale and repurchase, held to be exempt from state and municipal taxation. City of Chicago v. Lunt (1869) 52 Ill. 414.

Capital stock of a bank organized under Acts 15th Gen. Assem. Iowa, c. 60, invested in United States bonds or securities, was not liable to state taxation. German-American Sav. Bank v. City of Burlington (1880) 54 Iowa, 609, 7 N. W. 105, following New York v. Tax Com'rs (1864) 69 U. S. (2 Wall.) 200, 17 L. Ed. 793.

The amount paid for United States bonds purchased out of the general assets of a savings bank should be deducted from its taxable assets. Ottumwa Sav. Bank v. City of Ottumwa (1895) 95 Iowa, 176, 63 N. W. 672.

A bank, which claims that a portion of its capital is invested in United States bonds, stocks, or currency, must show affirmatively the exact amount of its capital so invested; otherwise, such capital will not be exempt from taxation. City of New Orleans v. New Orleans Canal & Banking Co. (1877) 29 La. Ann. 851, affirmed (1879) 99 U. S. 97, 25 L. Ed. 409.

Where a part of the capital stock of a corporation was invested in the bonds of the United States, and a tax was levied upon this part of the capital stock separately under the name of "shares of stock in incorporated companies," it was held that the assessment was against the corporation in respect of its capital stock, and was illegal. St. Louis Bldg. & Sav. Ass'n v. Lightner (1868) 42 Mo. 421.

The capital of a private bank invested in United States bonds is not taxable by the state. State ex rel. Davis v. Rogers (1883) 79 Mo. 283.

Corporations were entitled, when as-

sessed under the New Jersey tax act of March 28, 1862, to have deducted from the amount of their capital stock paid in, and accumulated surplus, the amount of the stock and public securities issued by the United States owned by them at the time of assessment. Newark City Bank v. Assessor of Fourth Ward of City of Newark (1862) 30 N. J. Law (1 Vroom) 13; Mechanics' & Traders' Bank v. Bridges (1862) 30 N. J. Law (1 Vroom) 112.

The principle that the capital of an incorporated company is, when invested in bonds or other securities of the United States, exempt from state taxation, unless there is an express congressional permission to tax the same, is clearly established. Mutual Life & Casualty Ins. Co. v. Haight (1870) 34 N. J. Law (5 Vroom) 128.

A foreign corporation is not liable to be taxed for any portion of its capital invested in the stock of the United States. Laws N. Y. 1855, c. 37. International Life Assur. Soc. v. Commissioners of Taxes (N. Y. 1858) 28 Barb. 318, 17 How. Prac. 206.

A savings bank which owns United States bonds, not subject to taxation, is entitled, in the estimate of its property subject to taxation, to have such bonds deducted from its apparent surplus over and above the amount of its deposits. People v. Barker (1897) 47 N. E. 973, 154 N. Y. 128, affirming (1896) 40 N. Y. S. 1001 17 Misc. Rep. 180.

Life insurance company is not estopped to question validity of tax imposed by state upon its property, under Rev. St. 79—324, without deduction of amount of United States bonds included in valuation, on ground that officer of company, in listing property, under Rev. St. 79—310, had set forth all of the capital stock and other property of the company at its true value in money, where statement showed that United States bonds of certain amount were included in the valuation of the property listed. Farmers' & Bankers' Life Ins. Co. v. Anderson (1925) 232 P. 592, 117 Kan. 451.

As this section, exempting public securities of general government from taxation, is supreme law of land, under Const. U. S. art. 6, states are without authority to tax property of state banks or moneyed capital consisting of bonds of the United States, though such bonds are not expressly exempted by Const. art. 12, § 2, or Rev. Codes 1921, § 1998. East Helena State Bank v. Rodgers (1925) 236 P. 1090, 73 Mont. 210.

Where state, under Const. art. 12, § 17, could not tax both shares of stock on state banks to individual shareholders, and to bank itself, by choosing to tax property of bank itself, it cannot tax its property which is invested in bonds of United States. Id.

14. —— **Taxability of corporation upon capital stock.**—For state decisions upholding and construing statutes involving assessment of federal securities, see German-American Sav. Bank v. Council of City of Burlington (1902) 91 N. W. 829, 118 Iowa, 84; Security Sav. Bank v. Carroll (1905) 103 N. W. 379, 128 Iowa, 230; People v. Commissioners of Assessments and Taxes of City and County of New York (N. Y. 1860) 32 Barb. 509, 20 How. Prac. 182.

The immunity of national securities from state taxation is violated by a tax imposed under authority of Code Iowa, § 1322, directing that the shares of stock of state bank shall be assessed to such banks, and not to individual stockholders, the effect of which is to require taxation upon property, not including the franchise of such banks and to adopt the value of the shares as the measure of the taxable valuation of such property without permitting any deductions from such valuation on account of bonds of the United States owned by its bank. Home Sav. Bank v. Des Moines (Iowa, 1906) 27 S. Ct. 571, 574, 205 U. S. 503, 51 L. Ed. 901.

In Bank Tax Case (N. Y. 1865) 2 Wall. 200, 17 L. Ed. 793, it was held that a tax laid by a state on banks, "on a valuation equal to the amount of their capital stock paid in, or secured to be paid in," is a tax on the property of the institution; and when that property consists of stocks of the federal government the law laying the tax is void.

15. —— **Franchise taxes.**—This section does not exempt savings societies from a franchise tax on account of deposits, part of which are invested in securities of the United States. Society for Savings v. Coite (Conn. 1868) 6 Wall. 594, 602, 18 L. Ed. 897; Provident Institution for Savings v. Massachusetts (Mass. 1868) 6 Wall. 611, 622, 18 L. Ed. 907.

A state statute held to impose a franchise tax on corporations lawful so far as it affected securities of the United States. Hamilton Mfg. Co. v. Massachusetts (Mass. 1868) 6 Wall. 632, 634, 18 L. Ed. 904.

Where a tax is declared in terms to be imposed on the franchises and privileges granted a corporation, it is not void because the corporation may have seen fit to invest its moneys in bonds or securities of the United States which are exempt from taxation. Monroe County Sav. Bank v. City of Rochester (1867) 37 N. Y. 365.

The taxes upon corporations, imposed under Laws N. Y. 1880, c. 542, as amended by Laws 1881, c. 361, are taxes upon franchises, not upon property, and the fact that dividends, a portion of which are derived from United States securities, exempt from taxation, furnish the basis

for computing the amounts of the taxes, does not invalidate the law. Such taxation is within the authority of the legislature. People v. Home Ins. Co. (1883) 92 N. Y. 328, affirmed (1890) 134 U. S. 594, 10 S. Ct. 593, 33 L. Ed. 1025.

§ 743. Panama Canal bonds to have rights and privileges of other bonds. The 2 per cent bonds of the United States authorized by section 8 of the Act of June 28, 1902, chapter 1302, shall have all the rights and privileges accorded by law to other 2 per cent bonds of the United States. (Dec. 21, 1905, c. 3, § 1, 34 Stat. 5.)

Historical Note

This section embraces part of the first section of an Act supplemental to the Panama Canal Act of 1902. The rest of the section is incorporated in section 543 of Title 12, Banks and Banking. Sections 2 and 3 of the act were temporary.

Act June 28, 1902, mentioned in this section was the Panama Canal Act. Section 8 authorized a bond issue, and is set out in the historical note to section 744 of this title.

§ 744. Redemption, payment, and exemption from taxes of Panama Canal bonds. Bonds issued under authority of section 8 of the Act of June 28, 1902 (chapter 1302, Thirty-second Statutes, page 484), shall be redeemable in gold coin at the pleasure of the United States after 10 years from the date of their issue, and payable 30 years from such date, and bear interest payable quarterly in gold coin at the rate of 2 per centum per annum; and such bonds shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. (June 28, 1902, c. 1302, § 8, 32 Stat. 484.)

Historical Note

This is part of section 8 of the Panama Canal Act of 1902, cited to the text, which, prior to its incorporation into the Code, read as follows: "The Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, as the proceeds may be required to defray expenditures authorized by this Act (such proceeds when received to be used only for the purpose of meeting such expenditures), the sum of one hundred and thirty million dollars, or so much thereof as may be necessary, and to prepare and issue therefor coupon or registered bonds of the United States in such form as he may prescribe, and in denominations of twenty dollars or some multiple of that sum, redeemable in gold coin at the pleasure of the United States after ten years from the date of their issue, and payable thirty years from such date, and bearing interest payable quarterly in gold coin at the rate of two per centum per annum; and the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: Provided, That said bonds may be disposed of by the Secretary of the Treasury at not less than par, under such regulations as he may prescribe, giving to all citizens of the United States an equal opportunity to subscribe therefor, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds herein authorized is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expense of preparing, advertising, and issuing the same."

A loan of an additional sum for the same purpose, and the issue of 3 per cent. bonds therefor, were authorized, and the authority contained in section 8 of the Act of 1902 for the issue of 2 per cent. bonds was repealed by Act Aug. 5, 1909, c. 6, § 39, set out in the historical note to section 745 of this title.

Other provisions of section 8 of the Act of 1902 not carried into the Code, as well as other sections of the act, were doubtless omitted as temporary and executed.

Act July 1, 1916, c. 209, § 1, 39 Stat. 334, as amended by Act June 12, 1917, c. 27, § 1, 40 Stat. 178, provided that expenditures from appropriations for the construction of the Panama Canal, including any portion of such appropriations used for purposes therein specified might be paid from or reimbursed to the Treasury out of proceeds of bonds authorized by Act June 28, 1902, § 8, and Act Aug. 5, 1909, § 39. This provision was doubtless omitted as temporary and executed.

Cross-References

The bonds mentioned in this section are to have all the rights and privileges accorded by law to other two per cent. bonds of the United States, by section 743 of this title.

Provisions for the maintenance, protection, and operation of the Panama Canal, and for the sanitation and government of the Canal Zone as an adjunct to the canal, are set forth in chapter 6 of Title 48, Territories and Insular Possessions.

§ 745. Payment, interest, and exemption from taxes of Panama Canal bonds. Bonds issued under authority of section 39 of the Act of August 5, 1909 (chapter 6, Thirty-sixth Statutes, page 117) shall be payable fifty years from the date of issue, and bear interest payable quarterly in gold coin at a rate not exceeding 3 per centum per annum; and such bonds shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. (Aug. 5, 1909, c. 6, § 39, 36 Stat. 117.)

Editorial comment.—The provision that the bonds "shall be payable fifty years from the date of issue" would seem to require some qualification in view of Act June 3, 1916, c. 134, § 124, Act Sept. 7, 1916, c. 451, § 13, and Act March 3, 1917, c. 159, § 400, referred to in the historical note.

Historical Note

This is part of section 39 of the Payne-Aldrich Tariff Act of 1909, cited to the text, which, prior to its incorporation into the Code, read as follows: "The Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, as the proceeds may be required to defray expenditures on account of the Panama Canal and to reimburse the Treasury for such expenditures already made and not covered by previous issues of bonds, the sum of two hundred and ninety million five hundred and sixty-nine thousand dollars (which sum together with the eighty-four million six hundred and thirty-one thousand nine hundred dollars already borrowed upon issues of two per cent. bonds under section eight of the Act of June twenty-eighth, nineteen hundred and two, equals the estimate of the Isthmian Canal Commission to cover the entire cost of the Canal from its inception to its completion), and to prepare and issue therefor coupon or registered bonds of the United States in such form as he may prescribe, and in denominations of one hundred dollars, five hundred dollars, and one thousand dollars, payable fifty years from the date of issue, and bearing interest payable quarterly in gold coin at a rate not exceeding three per centum per annum; and the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: Provided, That said bonds may be disposed of by the Secretary of the Treasury at not less than par, under such regulations as he may prescribe, giving to all citizens of the United States an equal opportunity to subscribe therefor, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds herein authorized is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising, and issuing the same; and the authority contained in section eight of the Act of June twenty-eighth nineteen hundred and two, for the issue of bonds bearing interest at two per centum per annum, is hereby repealed."

Such of the provisions of that section as were not carried into the Code were doubtless omitted as temporary and executed, or as superseded by section 1 of the Second Liberty Bond Act of Sept. 24, 1917, 40 Stat. 288, which provided that, of the bonds therein authorized, $225,000,000 should be in lieu of that amount of the unissued bonds authorized by section 39 of the Act of Aug. 5, 1909, and section 11 of that Act providing that no bonds should thereafter be issued under Act Aug. 5, 1909, § 39.

Act June 28, 1902, c. 1302, § 8, 32 Stat. 484, which was repealed in part by the original text of this section, is incorporated in part in section 744 of this title.

The insertion, in bonds to be issued under the original text of this section, of a provision that they should not be receivable as security for the issue of circulating notes to national banks, was authorized by Act March 2, 1911, c. 195, 36 Stat. 1013.

Provisions for the payment from or reimbursement to the Treasury of expenditures from appropriations for the construction of the Panama Canal out of

proceeds of sale of bonds authorized by the original text of this section, were made by the sundry civil appropriation act for the fiscal year 1917, Act July 1, 1916, c. 209, § 1, 39 Stat. 334.

The Secretary of the Treasury was authorized to issue and sell bonds available under the Acts of Aug. 5, 1909, Feb. 4, 1910, and March 2, 1911 to a total amount not to exceed $20,000,000, for the establishment of plants for the manufacture of nitrates by Act June 3, 1916, c. 134, § 124, 39 Stat. 215. A proviso to that section read as follows: "Provided, That any Panama Canal bonds issued and sold or used under the provisions of this section may be made payable at such time after issue as the Secretary of the Treasury, in his discretion, may deem advisable, and fix, instead of fifty years after date of issue, as in said Act of August fifth, nineteen hundred and nine, not exceeding fifty years."

The Secretary of the Treasury was also authorized, upon request of the United States Shipping Board, to issue and sell bonds available under the Acts of Aug. 5, 1909, Feb. 4, 1910, and March 2, 1911, to a total amount not to exceed $50,000,000, by Act Sept. 7, 1916, c. 451, § 13, 39 Stat. 732. That section contained a proviso reading as follows: "Provided, That any bonds issued and sold or used under the provisions of this section may be made payable at such time within fifty years after issue as the Secretary of the Treasury may fix, instead of fifty years after the date of issue, as prescribed in the Act of August fifth, nineteen hundred and nine."

Act March 3, 1917, c. 159, § 400, 39 Stat. 1002, provided as follows: "The Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time such sums as in his judgment may be required to meet public expenditures on account of the Mexican situation, the construction of the armor-plate plant, the construction of the Alaskan Railway, and the purchase of the Danish West Indies, or to reimburse the Treasury for such expenditures, and to prepare and issue therefor bonds of the United States not exceeding in the aggregate $100,000,000, in such form as he may prescribe, bearing interest payable quarterly at a rate not exceeding three per centum per annum; and such bonds shall be payable, principal and interest, in United States gold coin of the present standard of value, and both principal and interest shall be exempt from all taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority, and shall not be receivable by the Treasurer of the United States as security for the issue of circulating notes to national banks: Provided, That such bonds may be disposed of by the Secretary of the Treasury at not less than par, under such regulations as he may prescribe, giving all citizens of the United States an equal opportunity therefor, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds herein authorized is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising and issuing the same: And provided further, That in addition to such issue of bonds, the Secretary of the Treasury may prepare and issue for the purposes specified in this section any portion of the bonds of the United States now available for issue under authority of section thirty-nine of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine: And provided further, That the issue of bonds under authority of this Act and any Panama Canal bonds hereafter issued under authority of section thirty-nine of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hunderd and nine, shall be made redeemable and payable at such times within fifty years after the date of their issue as the Secretary of the Treasury, in his discretion, may deem advisable."

Res. March 4, 1917, c. 191, 39 Stat. 1201, provided as follows: "The Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time such sums as may be necessary to meet emergency expenditures directed by the President for naval construction or the expediting thereof, as may be authorized by law, not exceeding $150,000,000, or to reimburse the Treasury for such expenditures, and to prepare and issue therefor bonds of the United States in such form and subject to such terms and conditions as the Secretary of the Treasury may prescribe: Provided, That the Secretary of the Treasury is hereby authorized to issue serial bonds of the United States maturing in equal amounts from date of issue to twenty years from date of issue, bearing interest payable semiannually at a rate not exceeding three per centum per annum: Provided further, That such bonds shall be issued at not less than par, shall bear interest not exceeding three per centum per annum, shall not have the circulation privilege attached, and that all citizens of the United States shall be given an equal opportunity to subscribe therefor, but no commission shall be allowed or paid thereon; both principal and interest shall be payable in United States gold coin of the present standard of value, and shall be exempt from all taxes

or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. In order to pay the necessary expenses connected with said issue of bonds a sum not exceeding one-tenth of one per centum of the amount of bonds herein authorized is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct."

§ 746. Payment, interest, exemptions from taxes, etc., of First Liberty bonds. Bonds issued under section 1 of the First Liberty Bond Act (Act of April 24, 1917, chapter 4, section 1, Fortieth Statutes, page 35), shall be subject to the terms and conditions of issue, conversion, redemption, maturities, payment, and rate and time of payment of interest, not exceeding 3½ per centum per annum, as the Secretary of the Treasury has prescribed. The principal and interest thereof shall be payable in United States gold coin of the present standard of value and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority; but such bonds shall not bear the circulation privilege. (Apr. 24, 1917, c. 4, § 1, 40 Stat. 35.)

Historical Note

This is part of the first section of the First Liberty Bond Act of April 24, 1917, cited to the text, which, prior to its incorporation into the Code, read as follows: "The Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law not exceeding in the aggregate $5,000,000,000, exclusive of the sums authorized by section four of this Act, and to issue therefor bonds of the United States.

"The bonds herein authorized shall be in such form and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate and time of payment of interest, not exceeding three and one-half per centum per annum, as the Secretary of the Treasury may prescribe. The principal and interest thereof shall be payable in United States gold coin of the present standard of value and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority; but such bonds shall not bear the circulation privilege.

"The bonds herein authorized shall first be offered at not less than par as a popular loan, under such regulations prescribed by the Secretary of the Treasury as will give all citizens of the United States an equal opportunity to participate therein; and any portion of the bonds so offered and not subscribed for may be otherwise disposed of at not less than par by the Secretary of the Treasury; but no commissions shall be allowed or paid on any bonds issued under authority of this Act."

Such of the provisions of that section as were not carried into the Code, were probably omitted as temporary and executed, or as superseded by section 1 of the Second Liberty Bond Act of Sept. 24, 1917, c. 56, 40 Stat. 288, which provided that of the bonds therein authorized, $3,063,945,460, should be in lieu of that amount of unissued bonds authorized by sections 1 and 4 of the Act of April 24, 1917, and section 11 of the Second Liberty Bond Act which provided that bonds should not be issued under the authority of section 1 of Act April 24, 1917.

Section 2 of the Act of April 24, 1917, c. 4, provided for the purchase from foreign governments engaged in war with the enemies of the United States of obligations of such governments, and for the making of arrangements for establishing credits for, and purchasing obligations of, such governments. The authority thereby conferred was to cease upon the termination of the war with Germany.

Section 5 was probably omitted from the Code as temporary and executed. It read as follows: "Any series of bonds issued, under authority of sections one and four of this Act may, under such terms and conditions as the Secretary of the Treasury may prescribe, be convertible into bonds bearing a higher rate of interest than the rate at which the same were issued if any subsequent series of bonds shall be issued at a higher rate of interest before the termination of the war between the United States and the Imperial German Government, the date of such termination to be fixed by a proc-

lamation of the President of the United States."

The other sections of such act are incorporated wholly or partly in sections 755, 759, 764, 771, 774, and 804 of this title.

Cross-References

See section 774 of this title for the designations of the different Liberty Loan Acts.

Notes of Decisions

1. Authority to issue interim certificates.
2. Exemption from taxation.
3. Investment of trust funds in Liberty Bonds.
4. Negotiability.
5. Transfer of bonds.
6. Issuance of duplicates of lost bonds.
7. Rights and liabilities respecting Liberty Bonds.
8. Bona fide purchasers.
9. Jurisdiction of court.
10. Evidence.

1. Authority to issue interim certificates.—The provision that such bonds should be "in such form and subject to such terms and conditions of issue, etc., as the Secretary of the Treasury may prescribe," gave the Secretary of the Treasury power, as one of the terms and conditions subject to which he might issue such bonds, to first issue interim certificates therefor and make them negotiable. Security Nat. Bank of Oklahoma City v. People's Bank of Sullivan (1921) 230 S. W. 87, 287 Mo. 464.

2. Exemption from taxation.—Liberty loan bonds, issued under this statute, are subject to income tax when received by a stockholder of a corporation in payment of a corporate dividend. (1917) 31 Op. Atty. Gen. 125.

For income tax purposes, value of first Liberty Bonds, received in payment of salary, is to be considered, notwithstanding this section, declaring them exempt, both as to principal and interest, from all taxes, salary in legal effect being paid in money. Hitner v. Lederer (D. C. Pa. 1926) 14 F.(2d) 991.

Liberty Bonds, declared exempt from taxation by the statute under which they are issued, are indirectly taxed, in violation thereof and its underlying principles, when owned by a bank, by tax under Code Supp. Iowa 1913, § 1322, providing that its shares shall be assessed to its stockholders, the value thereof to be based on its capital, surplus, and undivided earnings, and its property not to be otherwise assessed; the bonds being considered in determining the value of the stock, and the bank's property being in truth assessed. Iowa Loan & Trust Co. v. Fairweather (D. C. Iowa, 1918) 252 F. 605.

The federal law rendering Liberty bonds and subdivisions of indebtedness exempt from taxation by the states and cities is the paramount law, and if there is an impediment to the exercise of the power of the United States in the state Legislature or its administration, the courts will restrain or set aside any attempt to evade. City of Waco v. Amicable Life Ins. Co. (Tex. Civ. App. 1921) 230 S. W. 698.

A corporation owning liberty bonds issued under this act is not to that extent exempt from excise taxes, franchise taxes, and other corporation taxes of the federal and state governments when such taxes are laid upon the value of the exercise of corporate privileges. (1917) 31 Op. Atty. Gen. 125.

The tax levied by Act July 1, 1902, § 6, par. 7, as amended by Act April 28, 1904 (local) upon incorporated savings banks, amounting to 4 per cent. of their gross earnings, less the interest paid their depositors, is a franchise tax, computed on the basis of gross earnings, and not a property tax, so that the tax is valid, though a portion of the gross earnings consisted of interest derived from liberty bonds and other securities exempt from taxation. Security Savings & Commercial Bank v. District of Columbia (App. D. C. 1922) 279 F. 185.

3. Investment of trust funds in Liberty Bonds.—Where will directed trustees to invest in railroad bonds returning not less than 4 per cent. per annum, though provision was mandatory, in view of existing national emergency, trustees were entitled to invest in 3½ per cent. Liberty Loan Bonds of the first issue. In re London's Estate (Sur. 1918) 171 N. Y. S. 981, 104 Misc. Rep. 372.

4. Negotiability.—Interim certificates for Liberty Bonds issued by Secretary of Treasury did not need to comply with state statutes, as to being payable at certain time and in money, in order to be negotiable; it being sufficient that the Secretary of the Treasury used language intended to convey the idea that they were to be negotiable. Security Nat. Bank of Oklahoma City v. People's Bank of Sullivan (1921) 230 S. W. 87, 287 Mo. 464.

Interim certificates for Liberty Bonds, providing that, "Upon surrender of this interim certificate, the bearer hereof will be entitled to receive when presented definitive bonds in the amount of ——— dollars, bearing interest from June 15, 1917. This certificate and all rights under and by virtue hereof shall pass by delivery"—were negotiable instruments, and title to bonds called for passed by their delivery without indorsement, as provid-

ed therein, the same as a bond or note payable to bearer. Id.

A bank indorsing an interim receipt issued by a Federal Reserve Bank to another bank for money deposited by the latter for a United States certificate of indebtedness purchased for one whose name, it was alleged, was forged on the back of the receipt, which it indorsed to her, held not liable to the latter for such receipt or the value thereof, as it was not a negotiable instrument, but merely evidence that the bank to which it was issued had deposited the money for the certificate, while the indorsement of the purchaser's name thereon merely indicated the person for whom it was acting as agent, and even if unauthorized did not affect the fulfillment of its compact. Bowie v. National City Bank of Seattle (1922) 210 P. 498, 122 Wash. 269.

5. Transfer of bonds.—Under the circumstances herein stated, where a default judgment was rendered in the Circuit Court of Bergen County, New Jersey, against the owner of certain registered Liberty loan bonds and, pursuant to such judgment, the bonds were sold and the sale approved by the court, the Treasury Department should transfer the bonds to the purchaser without an assignment from the registered owner. (1921) 32 Op. Atty. Gen. 536.

Where a default judgment was rendered in a justice's court of Montana against the owner of certain registered Liberty loan bonds, the only service of process being by publication and the Christian name of the registered owner being indicated in the order of publication only by initial letters, the Treasury Department should not transfer the bonds in question without an assignment from the registered owner. (1921) 32 Op. Atty. Gen. 464. On the same day in (1921) Op. Atty Gen. 465, it was advised that where a default decree in an attachment suit was rendered in a chancery court of Tennessee against a nonresident owner of certain registered Liberty loan bonds, the Treasury Department should not transfer the bonds without an assignment from the registered owner until it is ascertained that no application has been filed for setting aside such decree within 12 months from the rendition thereof.

In (1922) 33 Op. Atty. Gen. 133, it appeared that certain foreign insurance corporations, as a prerequisite in transacting business in the state of Georgia, deposited certain registered Liberty loan bonds with the treasurer and bond commissioner of that state and thereafter, upon said insurance companies having become insolvent and being in process of liquidation in the states in which they were incorporated, the superior court of Fulton County, Ga., issued a decree appointing a receiver of said bonds and directing the trustee thereof to deliver same to said receiver. On these facts it was held:

1. That said court had jurisdiction of the subject-matter and of the trustee.

2. That the decree of said court operated to vest title to said bonds in the receiver.

3. That the Treasury Department could properly transfer or exchange said bonds upon proper assignment thereof executed by said receiver; and, in making this transfer or exchange, the Treasury Department would be legally protected from any claim by or on behalf of the liquidator of said insurance companies in the state of New York or elsewhere.

In (1921) 33 Op. Atty. Gen. 49, it was said that under the circumstances therein stated, where a registered Liberty loan bond was deposited with the payee of a note as collateral security for its payment and, upon default in the payment of said note, a judgment was entered thereon in favor of the payee and the court decreed that an assignment of the bond should be made, said bond might be transferred on the books of the Treasury Department without assignment of the registree.

In (1921) 33 Op. Atty. Gen. 51, it appeared that certain Liberty loan bonds and Victory notes were registered in the name of one John F. Rogers, the same being community property of the said Rogers and his wife. Rogers died intestate, and there being no debts, no administration was had upon his estate. The District Court of Grayson County, Tex., partitioned the estate of the decedent and by its judgment, which became final, vested the title to said bonds and notes in Mrs. Mary E. Reynolds, a daughter of the decedent. It was the opinion of the Attorney General that under such circumstances the Treasury Department might safely reissue said bonds and notes in the name of the said Mary E. Reynolds.

Assignments in blank of liberty bonds, coupled with delivery of the bonds, held sufficient to transfer ownership thereof to bank purchasing the bonds. (1924) 34 Op. Atty. Gen. 262.

6. Issuance of duplicates of lost bonds.—Where signature of registered owner assigning liberty bonds was not attested in compliance with the regulations of the Treasury Department, the Secretary of the Treasury on bonds being lost is not authorized by sections 737 and 738 of this title, to issue duplicates. (1924) 34 Op. Atty. Gen. 262.

7. Rights and liabilities respecting Liberty bonds.—Seller of registered negotiable Liberty Bond, who should have known at the time of the sale that the bond had been either lost or stolen, was liable to buyer for purchase price, when it subsequently developed that it had

been lost or stolen. Barrett v. Greenhouse (Sup. 1921) 191 N. Y. S. 304.

Failure to return held "conversion" of Liberty bonds by bank, where they were left for safe-keeping. Mulenix v. Fairfield Nat. Bank of Fairfield (Iowa, 1926) 209 N. W. 432.

Delivery by individual to state bank of Liberty bonds, with instructions to send them to United States Treasury to be exchanged for later issue of Liberty bonds, creates relation of principal and agent. State v. Atlas Bank of Neligh (1926) 209 N. W. 334, 114 Neb. 650.

Fact that defendant wrongfully registered Liberty bonds in his name did not deprive plaintiff of title, since a willful wrongdoer cannot take advantage of his own wrong or thereby acquire title. Feil v. Wells (Mo. App. 1925) 268 S. W. 893.

Liberty bonds, in name of decedent "or" his incompetent sister, in absence of evidence as to who furnished price or that survivor should be owner, must be held to be owned in common, and sister and decedent's estate were each entitled to one-half thereof; word "or" being used as equivalent to "and." In re Kimball's Estate (Sur. 1924) 207 N. Y. S. 757, 124 Misc. Rep. 181.

Where a bank bought government bonds to fill subscriptions for such bonds taken by it from individuals, and subscriptions said nothing about delivery, but provided for cash payment on notice from bank, held, that contract was to pay on delivery, and that title should not pass until payment was made, notwithstanding such bonds were registered in names of subscriber. Broughton v. Hunter's Bank (Mo. App. 1926) 264 S. W. 469.

8. Bona fide purchasers.—In an action by a bank to enjoin federal bank from delivering to defendant bank Liberty Bonds called for by interim certificates in the hands of plaintiff, evidence held to show that plaintiff was a purchaser for value in due course without notice of any defect in the title of its vendors, and therefore the bona fide holder of the certificate in suit. Security Nat. Bank of Oklahoma City v. People's Bank of Sullivan (1921) 230 S. W. 87, 287 Mo. 464.

Defendants, who were stockbrokers, with a department for buying and selling Liberty Bonds, acted in bad faith, within Negotiable Instruments Law, § 95, in purchasing plaintiff's bonds from her 15 year old son, who had stolen them, on his statement that he was in business for himself and owned them, without taking any precautions against fraudulent transactions, where the boy was of an immature, diseased, and degenerate appearance. Morris v. Muir (Mun. Ct. 1921) 181 N. Y. S. 913, affirmed (1920) 181 N. Y. S. 945, 191 App. Div. 947.

9. Jurisdiction of court.—In action for loss of Liberty Bond, allegation that bond was of the denomination of $100 and with accrued interest was worth $102 held to give circuit court jurisdiction, though jury found value of bond to be less than $100 where there was no proof tending to show fraud upon the jurisdiction of court. Merchants' Bank of Vandervoort v. Affholter (1919) 215 S. W. 648, 140 Ark. 480.

10. Evidence.—In replevin by subscriber to Liberty bonds to recover them from bank through whom subscription was made, in which defense was that bonds, though registered in name of plaintiff, had not been paid for and were therefore still property of bank, held, that testimony that other banks in county followed same course of buying bonds from government as defendant did was inadmissible. Broughton v. Hunter's Bank (Mo. App. 1924) 264 S. W. 469.

In an action by a bank to enjoin federal bank from delivering to defendant bank Liberty Bonds called for by interim certificates purchased by plaintiff from others who had feloniously taken them from defendant bank, burden was upon the plaintiff bank to show that it was a purchaser for value in due course, without notice of the defect in the title of its vendors. Security Nat. Bank of Oklahoma City v. People's Bank of Sullivan (1921) 230 S. W. 87, 287 Mo. 464.

In replevin against bank by subscribers to Liberty bonds to recover them, finding of trial court that it was not intention of parties that title should pass until price should be paid, and that payment had not been made, held supported by sufficient evidence. Broughton v. Hunter's Bank (Mo. App. 1924) 264 S. W. 469.

§ 747. Tax exemptions; second and subsequent Liberty loans. All bonds and certificates authorized by sections 752, 754, and 757 of this title shall be exempt, both as to principal and interest from all taxation imposed on September 24, 1917, or thereafter by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war-profits taxes, imposed on September

24, 1917, or thereafter by the United States, upon the income or profits of individuals, partnerships, associations, or corporations. The interest on an amount of such bonds and certificates the principal of which does not exceed in the aggregate $5,000, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes provided for in subdivision (b) of this section. (Sept. 24, 1917, c. 56, § 7, 40 Stat. 291.)

Editorial comment.—It has been suggested that the words "on September 24, 1917, or thereafter," appearing in two places, should be omitted.

Section 4 of the Act of Sept. 24, 1917, as amended by section 3 of the Act of April 4, 1918, c. 44, 40 Stat. 502 (set out in historical note to section 752 of this title) after enumerating certain bonds to which that section should not apply, provided: "The provisions of section seven [this section and section 758 of this title] shall extend to all such bonds." It would seem that that provision should be included in the Code.

Historical Note

This is part of section 7 of the Second Liberty Bond Act of Sept. 24, 1917, cited to the text.

See, also, the historical note to section 752 of this title.

Cross-References

The portion of the original text of this section omitted here is incorporated in section 758 of this title.

Notes of Decisions

See, also, notes to section 746 of this title.

1. Exemption from taxation.—Statute imposing license tax on gross income of domestic insurance company held not to burden instrumentality of federal government in including income from federal securities exempt under this section. Northwestern Mut. Life Ins. Co. v. State (1926) 207 N. W. 430, 189 Wis. 103.

Measuring tax by gross income of corporation does not invalidate it, though part of income derived from property is not taxable, because it is income from federal tax-exempt securities. Northwestern Mut. Life Ins. Co. v. State (1926) 207 N. W. 430, 189 Wis. 103.

§ 748. Additional Liberty bond tax exemptions. In addition to the exemptions contained in section 747 of this title 4 per centum and 4¼ per centum Liberty bonds shall be exempt from graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, imposed on June 2, 1924, or thereafter by the United States upon the income or profits of individuals, partnerships, corporations, or associations, in respect to the interest on aggregate principal amounts thereof as follows:

Until the expiration of two years after the date of the termination of the war between the United States and the German Government (July 2, 1921), as fixed by proclamation of the President, on $125,000 aggregate principal amount; and for three years more on $50,000 aggregate principal amount. (June 2, 1924, 4.01 p. m., c. 234, § 1028, 43 Stat. 349.)

Historical Note

This section was part of the Revenue Act of June 2, 1924, cited to the text. Similar provisions were contained in Act Nov. 23, 1921, c. 136, § 1328, 42 Stat. 317, which was repealed by section 1100 of the Act of 1924.

Prior to its incorporation into the Code, this section provided that the exemption therein contained should be in addition to the exemption provided in section 7 of the Second Liberty Bond Act (section 747 of this title) and in addition to the exemption provided in subdivision 3 of section 1 of the Supplement to the Second Liberty Bond Act, in respect to bonds issued upon conversion of 3½ per centum bonds, but in lieu of the exemptions provided and free from the conditions and limitations imposed in subdivisions (1) and (2) of section 1 of the Supplement to the Second Liberty Bond Act and in section 2 of the Victory

Liberty Loan Act. Section 1 of the Supplement to the Second Liberty Bond Act (Act Sept. 24, 1918, c. 176, 40 Stat. 965) provided certain exemptions until the expiration of two years from the termination of the war with Germany, and was doubtless omitted as obsolete. Section 2 of the Victory Liberty Loan Act (Act March 3, 1919, c. 100, 40 Stat. 1310) is incorporated in section 749 of this title, but seems to be superseded by this section.

§ 749. First, second, third, and fourth Liberty loans; bonds; exemption from taxation. (a) Until the expiration of five years after the date of the termination of the war between the United States and the German Government, (July 2, 1921) as fixed by proclamation of the President, in addition to the exemptions provided in section 747 of this title in respect to the interest on an amount of bonds and certificates, authorized by sections 752, 754 and 757 of this title, the principal of which does not exceed in the aggregate $5,000, and in addition to all other exemptions provided in the Second Liberty Bond Act (September 24, 1917, chapter 56, Fortieth Statutes, page 288) or the supplement to Second Liberty Bond Act, (September 24, 1918, chapter 176, Fortieth Statutes, page 965) the interest received on and after January 1, 1919, on an amount of bonds of the first Liberty loan converted, dated November 15, 1917, May 9, 1918, or October 24, 1918, the second Liberty loan converted and unconverted, the third Liberty loan, and the fourth Liberty loan, the principal of which does not exceed $30,000 in the aggregate, owned by any individual, partnership, association, or corporation, shall be exempt from graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, imposed on March 3, 1919, or thereafter by the United States, upon the income or profits of individuals, partnerships, associations or corporations.

(b) In addition to the exemption provided in subdivision (a), and in addition to the other exemptions therein referred to, the interest received on and after January 1, 1919, on an amount of the bonds therein specified the principal of which does not exceed $20,000 in the aggregate, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes therein specified: *Provided,* That no owner of such bonds shall be entitled to such exemption in respect to the interest on an aggregate principal amount of such bonds exceeding three times the principal amount of notes of the Victory Liberty loan originally subscribed for by such owner and still owned by him at the date of his tax return. (Mar. 3, 1919, c. 100, § 2, 40 Stat. 1310.)

Editorial comment.—This section should be read in connection with Act June 2, 1924, c. 234, § 1028, 43 Stat. 349 (section 748 of this title) providing that the exemptions contained therein should be in lieu of those provided in this section.

Historical Note

This was the second section of the Victory Liberty Loan Act of March 3, 1919, cited to the text.

§ 750. Bonds and certificates of indebtedness beneficially owned by nonresident aliens not engaged in business in United States exempt from taxation. Notwithstanding the provisions of the Second Liberty Bond Act (September 24, 1917, chapter 56, Fortieth Statutes, page 288) or of chapter 10 of Title 15, (War Finance Corporation Act) or of any other law, bonds, notes, and certificates of indebtedness of the

United States and bonds of the War Finance Corporation shall, while beneficially owned by a nonresident alien individual, or a foreign corporation, partnership, or association, not engaged in business in the United States, be exempt both as to principal and interest from any and all taxation imposed on July 9, 1918 or thereafter by the United States, any State, or any of the possessions of the United States or by any local taxing authority. (July 9, 1918, c. 142, § 3, 40 Stat. 845; Mar. 3, 1919, c. 100, § 4, 40 Stat. 1311.)

Historical Note

This is Act July 9, 1918, c. 142, § 3, cited to the text as amended by Act March 3, 1919, c. 100, § 4, also cited to the text.

§ 751. Consols of 1930, interest, payment, exemption from taxes. The bonds of the United States bearing interest at 5 per centum per annum, payable February 1, 1904, and any bonds of the United States bearing interest at 4 per centum per annum, payable July 1, 1907, and any bonds of the United States bearing interest at 3 per centum per annum, payable August 1, 1908, exchanged for an equal amount of coupon or registered bonds of the United States in the form prescribed by the Secretary of the Treasury, in denominations of $50 or any multiple thereof, bearing interest at the rate of 2 per centum per annum, payable quarterly, shall be payable at the pleasure of the United States after thirty years from the date of their issue, and said bonds to be payable, principal and interest, in gold coin of the standard value on March 14, 1900, and be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. (Mar. 14, 1900, c. 41, § 11, 31 Stat. 48.)

Editorial comment.—An examination of the original text (set out in the historical note) would seem to indicate that the provisions as to time and medium of payment and exemption from taxation apply to the bonds issued in exchange, instead of the original bonds.

Historical Note

Prior to its incorporation into the Code, this section read as follows: "The Secretary of the Treasury is hereby authorized to receive at the Treasury any of the outstanding bonds of the United States bearing interest at five per centum per annum, payable February first, nineteen hundred and four, and any bonds of the United States bearing interest at four per centum per annum, payable July first, nineteen hundred and seven, and any bonds of the United States bearing interest at three per centum per annum, payable August first, nineteen hundred and eight, and to issue in exchange therefor an equal amount of coupon or registered bonds of the United States in such form as he may prescribe, in denominations of fifty dollars or any multiple thereof, bearing interest at the rate of two per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after thirty years from the date of their issue, and said bonds to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: Provided, that such outstanding bonds may be received in exchange at a valuation not greater than their present worth to yield an income of two and one-quarter per centum per annum; and in consideration of the reduction of interest effected, the Secretary of the Treasury is authorized to pay to the holders of the outstanding bonds surrendered for exchange, out of any money in the Treasury not otherwise appropriated, a sum not greater than the difference between their present worth, computed as aforesaid, and their par value, and the payments to be made hereunder shall be held to be payments on account of the sinking fund created by section thirty-six hundred and ninety-four of the Revised Statutes: And provided further, that the two per centum bonds to be issued under the provisions of this Act shall be issued at not less than par, and they shall be

numbered consecutively in the order of their issue, and when payment is made the last numbers issued shall be first paid, and this order shall be followed until all the bonds are paid, and whenever any of the outstanding bonds are called for payment interest thereon shall cease three months after such call; and there is hereby appropriated out of any money in the Treasury not otherwise appropriated, to effect the exchanges of bonds provided for in this Act, a sum not exceeding one-fifteenth of one per centum of the face value of said bonds, to pay the expense of preparing and issuing the same and other expenses incident thereto."

Such of its provisions as were not carried into the Code were probably omitted as temporary and executed.

Previous provisions somewhat similar for the exchange of the then outstanding 3½ per cent. bonds for 3 per cent. bonds were made by Act July 12, 1882, c. 290, § 11, 22 Stat. 165.

Cross-References

The bonds issued under the original text of this section may be substituted by national banks for bonds deposited by them to secure their circulating notes by section 101 of Title 12, Banks and Banking.

§ 752. **Second, third, and fourth Liberty loans; amount; bonds.** The Secretary of the Treasury, with the approval of the President, is authorized to borrow, from time to time, on the credit of the United States for the purposes of sections 752 to 754, 757, 758, 760, 764 to 766, 769, 771, 773, and 774 of this title, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law, not exceeding in the aggregate $20,000,000,000, and to issue therefor bonds of the United States, in addition to the $2,000,000,000 bonds already issued or offered for subscription under authority of the Act approved April 24, 1917 (chapter 4, Fortieth Statutes, page 35), entitled "An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes": *Provided,* That of this sum $3,063,945,460 shall be in lieu of that amount of the unissued bonds authorized by sections 1 and 4 of said Act approved April 24, 1917, $225,000,000 shall be in lieu of that amount of the unissued bonds authorized by section 39 of the Act approved August 5, 1909 (chapter 6, Thirty-sixth Statutes, page 117), $150,000,000 shall be in lieu of the unissued bonds authorized by the joint resolution approved March 4, 1917 (chapter 191, Thirty-ninth Statutes, page 1201), and $100,000,000 shall be in lieu of the unissued bonds authorized by section 400 of the Act approved March 3, 1917 (chapter 159, Thirty-ninth Statutes, page 1002).

The bonds herein authorized shall be in such form or forms and denomination or denominations and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate or rates of interest, not exceeding 4¼ per centum per annum, and time or times of payment of interest, as the Secretary of the Treasury from time to time at or before the issue thereof may prescribe. The principal and interest thereof shall be payable in United States gold coin of the present standard of value.

The bonds herein authorized shall from time to time first be offered at not less than par as a popular loan, under such regulations, prescribed by the Secretary of the Treasury from time to time, as will in his opinion give the people of the United States as nearly as may be an equal opportunity to participate therein, but he may make allotment in full upon applications for smaller amounts of bonds in ad-

vance of any date which he may set for the closing of subscriptions and may reject or reduce allotments upon later applications and applications for larger amounts, and may reject or reduce allotments upon applications from incorporated banks and trust companies for their own account and make allotment in full or larger allotments to others, and may establish a graduated scale of allotments, and may from time to time adopt any or all of said methods, should any such action be deemed by him to be in the public interest: *Provided*, That such reduction or increase of allotments of such bonds shall be made under general rules to be prescribed by said Secretary and shall apply to all subscribers similarly situated. And any portion of the bonds so offered and not taken may be otherwise disposed of by the Secretary of the Treasury in such manner and at such price or prices, not less than par, as he may determine. The Secretary may make special arrangements for subscriptions at not less than par from persons in the military or naval forces of the United States, but any bonds issued to such persons shall be in all respects the same as other bonds of the same issue. (Sept. 24, 1917, c. 56, § 1, 40 Stat. 288; Apr. 4, 1918, c. 44, § 1, 40 Stat. 502; July 9, 1918, c. 142, § 1, 40 Stat. 844.)

Editorial comment.—This section has been criticized as authorizing, apparently anew an issue of bonds aggregating $20,000,000,000, whereas, it would show that the sum specified includes the bonds previously issued.

The words "sections 752 to 754 * * * of this title" are a translation of the words "this act" appearing in the original text. In addition to the sections enumerated, sections 747 and 801 of this title are from Act Sept. 24, 1917, c. 56. Their omission does not materially change the meaning or effect of the section.

Historical Note

This is the first section of the Second Liberty Bond Act of Sept. 24, 1917, cited to the text, as amended by section 1 of the Third Liberty Bond Act of April 4, 1918, and section 1 of the Fourth Liberty Bond Act of July 9, 1918, also cited to the text.

The amendment by Act April 4, 1918, increased the amount of bonds authorized and the rate of interest and added the last sentence of the section. Act July 9, 1918, again increased the amount of bonds.

Section 2 of the Act of Sept. 24, 1917, as amended by section 2 of the Act of April 4, 1918, and section 2 of the Act of July 9, 1918, authorized the Secretary of the Treasury with the approval of the President to establish credits for foreign governments at war with enemies of the United States, to purchase obligations of such governments, or to make advances to or for the account of such governments and receive such obligations for the amount of such advances; and contained provisions concerning rates of interest, conversion of such obligations, etc. The authority granted was to cease upon the termination of the war with Germany. The section was probably omitted from the Code as temporary and executed.

Section 4 of the Act of Sept. 24, 1917, as amended by section 3 of the Act of April 4, 1918, read as follows: "In connection with the issue of any series of bonds under the authority of section one of this Act the Secretary of the Treasury may determine that the bonds of such series shall be convertible as provided in or pursuant to this section, and, in any such case, he may make appropriate provision to that end in offering for subscription the bonds of such series (hereinafter called convertible bonds). In any case of the issue of a series of convertible bonds, if a subsequent series of bonds (not including United States certificates of indebtedness, war savings certificates, and other obligations maturing not more than five years from the issue of such obligations, respectively) bearing interest at a higher rate shall, under the authority of this or any other Act, be issued by the United States before the termination of the war between the United States and the Imperial German Government, then the holders of such convertible bonds shall have the privilege, at the option of the several holders, at any time within such period, after the public offering of bonds of such subsequent series, and under such rules and regulations as the Secretary of the Treasury shall have prescribed, of converting their bonds, at par, into bonds bearing such higher rate of interest at such price not less than par as the Secretary of the Treasury shall have prescribed. The bonds to be issued upon such conversion under this act shall be substantial-

ly the same in form and terms as shall be prescribed by or pursuant to law with respect to the bonds of such subsequent series, not only as to interest rate but also as to convertibility (if future bonds be issued at a still higher rate of interest) or nonconvertibility, and as to exemption from taxation, if any, and in all other respects, except that the bonds issued upon such conversion shall have the same dates of maturity, of principal, and of interest, and be subject to the same terms of redemption before maturity, as the bonds converted; and such bonds shall be issued from time to time if and when and to the extent that the privilege of conversion so conferred shall arise and shall be exercised. If the privilege of conversion so conferred under this Act shall once arise, and shall not be exercised with respect to any convertible bonds within the period so prescribed by the Secretary of the Treasury, then such privilege shall terminate as to such bonds and shall not arise again though again thereafter bonds be issued bearing interest at a higher rate or rates.

"That holders of bonds bearing interest at a higher rate than four per centum per annum, whether issued (a) under section one, or (b) upon conversion of four per centum bonds issued under section one, or (c) upon conversion of three and one-half per centum bonds issued under said Act approved April twenty-fourth, nineteen hundred and seventeen, or (d) upon conversion of four per centum bonds issued upon conversion of such three and one-half per centum bonds, shall not be entitled to any privilege of conversion under or pursuant to this section or otherwise. The provisions of section seven shall extend to all such bonds.

"If bonds bearing interest at a higher rate than four per centum per annum shall be issued before July first, nineteen hundred and eighteen, then any bonds bearing interest at the rate of four per centum per annum which shall, after July first, nineteen hundred and eighteen, and before the expiration of the six months' conversion period prescribed by the Secretary of the Treasury, be presented for conversion into bonds bearing interest at such higher rate, shall, for the purpose of computing the amount of interest payable, be deemed to have been converted on the dates for the payment of the semiannual interest on the respective bonds so presented for conversion, last preceding the date of such presentation."

It was probably omitted from the Code as temporary and executed. See however the editorial comment on sections 747 and 758 of this title.

Section 15 of the Act of Sept. 24, 1917, as added by section 6 of the Act of April 4, 1918, provided for the purchase by the Secretary of the Treasury of bonds issued under that Act and bonds issued upon conversion of bonds issued under that act and the First Liberty Bond Act. The purchases were authorized until the expiration of one year after the termination of the war. The section was doubtless omitted as temporary and executed.

Other sections of the acts cited in the credits to the text are incorporated in various sections of this chapter.

Cross-References

Act April 24, 1917, § 1, mentioned in this section is set out in the historical note to section 746 of this title, and Act Aug. 5, 1909, § 39, Act March 3, 1917, § 400, and the Joint Resolution of March 4, 1917, in the historical note to section 745 of this title. As to section 4 of the Act of 1917, see section 764 of this title.

Notes of Decisions

See, also, notes to section 746 of this title.

1. **Negotiability.**—Coupon Liberty bond, issued by the United States during World War, pursuant to this section and Act March 3, 1919 (see section 753 of this title) is "negotiable instrument," within Rev. Codes Mont. 1921, § 8408, but a registered United States bond, so issued is not. Grosfield v. First Nat. Bank (1925) 236 P. 250, 73 Mont. 219.

2. **Judicial notice.**—Under Rev. Codes Mont. 1921, § 10532, it is duty of the court to take judicial notice of bonds issued by the United States during the World War, pursuant to this section and Act March 3, 1919 (incorporated in part in section 753 of this title), and of the provisions of such bonds. Grosfield v. First Nat. Bank (1925) 236 P. 250, 73 Mont. 219.

§ 753. United States notes; (a) Authority to issue; amount; forms and denominations; interest; payment and redemption. In addition to the bonds and certificates of indebtedness and war-savings certificates authorized by sections 752 to 754, 757, 758, 760, 764 to 766, 769, 771, 773 and 774 of this title, the Secretary of the Treasury, with the approval of the President, is authorized to borrow from time to time on the credit of the United States for the purposes of

said sections, to provide for the purchase or redemption of any notes issued thereunder, and to meet public expenditures authorized by law, not exceeding in the aggregate $7,500,000,000 at any one time outstanding, and to issue therefor notes of the United States at not less than par in such form or forms and denomination or denominations, containing such terms and conditions, and at such rate or rates of interest, as the Secretary of the Treasury may prescribe, and each series of notes so issued shall be payable at such time not less than one year nor more than five years from the date of its issue as he may prescribe, and may be redeemable before maturity (at the option of the United States) in whole or in part, upon not more than one year's nor less than four months' notice, and under such rules and regulations and during such period as he may prescribe.

(b) Series; exemptions. The notes herein authorized may be issued in any one or more of the following series as the Secretary of the Treasury may prescribe in connection with the issue thereof:

(1) Exempt, both as to principal and interest, from all taxation (except estate or inheritance taxes) imposed on September 14, 1917, or thereafter by the United States, any State, or any of the possessions of the United States, or by any local taxing authority;

(2) Exempt, both as to principal and interest, from all taxation imposed on September 14, 1917, or thereafter by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, imposed on September 14, 1917, or thereafter by the United States, upon the income or profits of individuals, partnerships, associations, or corporations;

(3) Exempt, both as to principal and interest, as provided in paragraph (2); and with an additional exemption from the taxes referred to in clause (b) of such paragraph, of the interest on an amount of such notes the principal of which does not exceed $30,000, owned by any individual, partnership, association, or corporation; or

(4) Exempt, both as to principal and interest, from all taxation imposed on September 14, 1917, or thereafter by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) all income, excess-profits, and war-profits taxes, imposed on September 14, 1917, or thereafter by the United States, upon the income or profits of individuals, partnerships, associations, or corporations.

(c) Conversion into other series. If the notes authorized under this section are offered in more than one series bearing the same date of issue, the holder of notes of any such series shall (under such rules and regulations as may be prescribed by the Secretary of the Treasury) have the option of having such notes held by him converted at par into notes of any other such series offered bearing the same date of issue.

(d) No circulation privileges; payment in gold coin; "bond" or "bonds" defined. None of the notes authorized by this section shall bear the circulation privilege. The principal and interest thereof shall be payable in United States gold coin of the present standard of

value. The word "bond" or "bonds" where it appears in sections 735 to 738, 760, 765, 771 and 773 of this title and section 84 of Title 12, but in such sections only, shall be deemed to include notes issued under this section. (Sept. 24, 1917, c. 56, § 18; Mar. 3, 1919, c. 100, § 1, 40 Stat. 1309; Nov. 23, 1921, c. 136, § 1401, 42 Stat. 321.)

Editorial comment.—As to the words "sections 752 to 754 * * * of this title," see the second paragraph of the comment on section 752 of this title.

Historical Note

This is section 18 of the second Liberty Bond Act of Sept. 24, 1917, cited to the text as added by section 1 of the Victory Liberty Loan Act of March 3, 1919, and amended by section 1401 of the Revenue Act of Nov. 23, 1921, cited to the text. The amendment increased the amount of notes authorized, and added the purchase or redemption of notes issued thereunder, to the purposes for which the notes might be issued.

Prior to its incorporation into the Code, the last paragraph of this section referred to the word "bond" or "bonds" where it appeared in sections 8, 9, 10, 14, and 15 of that act (Act Sept. 24, 1917) and R. S. §§ 3702—3705, and 5200. Section 15 of the Act of Sept. 24, 1917, was omitted from the Code as temporary and executed (see note to section 752 of this title). The other sections mentioned in the original text were carried into those enumerated in the last paragraph of this section.

Notes of Decisions

1. Issuance of certificates of indebtedness without exemptions from taxes.—The Secretary of the Treasury is authorized to issue Treasury certificates of indebtedness, having only the exemptions specifically prescribed for notes under the provisions of subdivision (4) of paragraph (b) of this section. (1923) 33 Op. Atty. Gen. 498.

2. Bona fide purchaser.—A purchaser of negotiable Victory Notes, which had previously been stolen from the owner, is entitled thereto as against the one from whom they were stolen, if he had no notice of the defects in the title. Murray v. Wagner (C. C. A. N. Y. 1921) 277 F. 32.

A purchaser of negotiable Victory Notes from one who was in the business of selling such securities is not put on inquiry as to defects in the title to the bonds by knowledge that the broker was selling them for another, since the rule that an agent cannot pass title is subject to exception, where the property consists of money or negotiable paper under Negotiable Instruments Law N. Y. § 91, and where the principal intrusts the possession of his goods to one whose business it is to sell similar property, either as the owner or as the agent of the owner. Id.

Under Negotiable Instruments Law N. Y. § 95, providing that notice of defect in the title must be actual knowledge of the defect or knowledge of such facts that the taking of the instrument amounted to bad faith, a suspicion of defect of title or the knowledge of circumstances which would excite such suspicion, or even gross negligence by the taker, does not amount to knowledge of the defect, which defeats his title, so that mere knowledge that the seller of Victory Notes was a broker selling them for another does not defeat the title of the purchaser. Id.

§ 754. Second and third Liberty loans; additional loans; certificates of indebtedness. In addition to the bonds authorized by section 752 of this title the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of sections 752 to 754, 757, 758, 760, 764 to 766, 769, 771, 773, and 774 of this title, and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor certificates of indebtedness of the United States at not less than par in such form or forms and subject to such terms and conditions and at such rate or rates of interest as he may prescribe; and each certificate so issued shall be payable at such time not exceeding one year from the date of its issue, and may be redeemable before maturity upon such terms and conditions, and the interest accruing thereon shall be payable at such time or times as the Secretary of the Treasury may prescribe. The sum of such certificates outstanding here-

under and under section 755 of this title, shall not at any time exceed in the aggregate $10,000,000,000. (Sept. 24, 1917, c. 56, § 5, 40 Stat. 290; Apr. 4, 1918, c. 44, § 4, 40 Stat. 504; Mar. 3, 1919, c. 100, § 3, 40 Stat. 1311.)

Editorial comment.—As to the words "sections 752 to 754 * * * of this title," see the second paragraph of the comment on section 752 of this title.

Historical Note

This is section 5 of the Second Liberty Bond Act of Sept. 24, 1917, cited to the text, as amended by the other acts cited to the text.

Each amendment increased the amount of certificates of indebtedness authorized.

§ 755. **First Liberty loan; certificates of indebtedness.** In addition to the bonds authorized by sections 1 and 4 of the Act of April 24, 1917 (chapter 4, Fortieth Statutes, page 36), the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of said Act and to meet public expenditures authorized by law, such sum or sums as, in his judgment, may be necessary, and to issue therefor certificates of indebtedness at not less than par in such form and subject to such terms and conditions and at such rate of interest, not exceeding 3½ per centum per annum, as he may prescribe; and each certificate so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of the Treasury may prescribe. Certificates of indebtedness herein authorized shall not bear the circulation privilege, and the sum of such certificates outstanding shall at no time exceed in the aggregate $2,000,000,000, and such certificates shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority. (Apr. 24, 1917, c. 4, § 6, 40 Stat. 36.)

Editorial comment.—It has been suggested that this was temporary, and, in 1925, obsolete. If left in the Code, it would seem that the words "for the purposes of said act" should be changed to avoid the necessity of referring to such act for the purposes for which the certificates may be issued. Perhaps those words could be omitted.

Historical Note

This section was part of the First Liberty Bond Act of April 24, 1917, cited to the text. See the historical notes to sections 746 and 764 of this title.

§ 756. **Loans to meet public expenditures; certificates of indebtedness; limitation; counterfeiting.** The Secretary of the Treasury is authorized to borrow, from time to time, at a rate of interest not exceeding 3 per centum per annum, such sum or sums as in his judgment, may be necessary to meet public expenditures, and to issue therefor certificates of indebtedness in such form and in such denominations as he may prescribe; and each certificate so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of the Treasury may prescribe: *Provided,* That the sum of such certificates outstanding shall at no time exceed $300,000,000, and the provisions of existing law respecting counterfeiting and other fraudulent practices are extended to the bonds and certificates of indebtedness authorized by this section.* (June 13, 1898, c. 448, § 32, 30 Stat. 466;

Aug. 5, 1909, c. 6, § 40, 36 Stat. 117; Mar. 3, 1917, c. 159, § 401, 39 Stat. 1003.)

* The words "bonds and certificates of indebtedness authorized by this section" should be "certificates of indebtedness authorized by this section, and bonds authorized by section 33 of the Act of June 13, 1898," or some equivalent words.

Historical Note

This is section 32 of the War Revenue Act of June 13, 1898, as amended by the other acts cited to the text.

It was amended, chiefly by increasing the limitation of the amount of certificates outstanding, from $100,000,000, in the section as originally enacted, to $200,000,000, by section 6 of the Act of 1909. It was again amended by the Act of 1917 by again increasing the limitation of the amount of certificates outstanding from $200,000,000 to $300,000,000, and by leaving the denominations of the certificates to the discretion of the Secretary of the Treasury.

In the original text, the proviso referred to "bonds and certificates of indebtedness authorized by this act [Act June 13, 1898]." The bonds authorized by that act were those authorized by section 33, omitted from the Code as temporary. It authorized the Secretary of the Treasury to borrow $400,000,000, or so much thereof as might be necessary, to defray the expenses of the existing war, and to issue coupon or registered bonds in denominations of $20, or some multiple thereof, redeemable in coin, at the pleasure of the United States, after 10 years from the date of their issue, and bearing interest at the rate of 3 per cent. per annum, payable quarterly.

Cross-References

For provisions respecting counterfeiting and other fraudulent practices, see chapter 7 of Title 18, Criminal Code and Criminal Procedure.

Notes of Decisions

1. **Power of Congress.**—Either in time of war or in time of peace, if the exigency of the federal government, in the judgment of Congress, requires the borrowing of money and issuing of bills of credit therefor, Congress has full power so to do, and to issue such bonds, notes, or other obligations of the government, which shall pass from hand to hand, and be negotiable, and have even the quality of legal tender for the payment of debts, as the Act of Congress may prescribe, and Congress may make interim certificates for bonds pass current as negotiable instruments from hand to hand. Security Nat. Bank of Oklahoma City v. People's Bank of Sullivan (1921) 230 S. W. 87, 287 Mo. 464.

§ 757. Second and third Liberty loans; additional loans; war-savings certificates. In addition to the bonds authorized by section 752 of this title and the certificates of indebtedness authorized by section 754 of this title, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of sections 752 to 754, 757, 758, 760, 764 to 766, 769, 771, 773 and 774 of this title and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor, at such price or prices and upon such terms and conditions as he may determine, war-savings certificates of the United States on which interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe. Such war-savings certificate shall be in such form or forms and subject to such terms and conditions, and may have such provisions for payment thereof before maturity, as the Secretary of the Treasury may prescribe. Each war-savings certificate so issued shall be payable at such time, not exceeding five years from the date of its issue, and may be redeemable before maturity, upon such terms and conditions as the Secretary of the Treasury may prescribe. The sum of such war-savings certificates outstanding shall not at any one time exceed in the aggregate $4,000,000,000. It shall not be lawful for any

one person at any one time to hold war-savings certificates of any one series to an aggregate amount exceeding $5,000. The Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue, or cause to be issued, stamps to evidence payments for or on account of such certificates. (Sept. 24, 1917, c. 56, § 6, 40 Stat. 291; Sept. 24, 1918, c. 176, § 2, 40 Stat. 966; Nov. 23, 1921, c. 136, § 1402, 42 Stat. 321.)

Editorial comment.—As to the words "sections 752 to 754 * * * of this title," see the comment on section 752 of this title.

Historical Note

This is section 6 of the second Liberty Bond Act of Sept. 24, 1917, cited to the text, as amended by the other acts so cited.

The amendment by the Act of Sept. 24, 1918, increased the total amount of certificates authorized, eliminated a provision as to the amount that might be sold to one person at one time, and made the limit which might be held by one person apply to certificates "of any one series." The Act of 1921 increased the amount that might be held by one person.

Notes of Decisions

1. Treasury regulations.—Under this section regulations of the Secretary of the Treasury that war savings certificates should not be transferable, etc., were within the power conferred upon him. U. S. v. Janowitz (N. Y. 1921) 42 S. Ct. 40, 257 U. S. 42, 66 L. Ed. 120.

2. Payment to owner named in certificate.—Since the Secretary of the Treasury, acting within his statutory authority, has restricted payment of war-savings certificates to the owner named thereon, only the owner named in such certificates or his personal representative can be recognized by the Treasury Department in making payment of said certificates. The judgment or decree of any court directing payment of a war-savings certificate to any person other than the owner thereof is a nullity in so far as it attempts to direct the Secretary of the Treasury; such judgment or decree does not divest the owner of the war-savings certificates of his property therein and does not effectually transfer his ownership in said certificate. (1923) 33 Op. Atty. Gen. 442.

3. Lost certificates.—Government held not required to pay for lost, unregistered, war saving stamp certificates. Mandelbaum v. U. S. (Iowa, 1926) 46 S. Ct. 185, 270 U. S. 7, 70 L. Ed. 448, affirming (C. C. A. 1924) 298 F. 295.

4. Offenses in general.—The possession of stolen war savings stamps is not an offense against the United States, unless the stamps are the property of the government. Rossi v. U. S. (C. C. A. Or. 1922) 278 F. 349.

A war savings certificate, issued pursuant to this section, with stamp or stamps affixed thereto, and the name of the owner written thereon, is an obligation of the United States within sections 262, 265 and 268 of Title 18, Criminal Code and Criminal Procedure, and the removal of the stamp therefrom with intent to defraud constitutes an alteration within section 262, and uttering or passing the stamp so removed with like intent is an offense, under section 265. When such a certificate has been registered, the removal or erasure of the registration number with intent to defraud constitutes an alteration; but the erasure of the serial number, which is not material to its validity, does not. U. S. v. Rossi (D. C. Or. 1920) 268 F. 620, affirmed (C. C. A. 1922) 278 F. 349.

Under this section, and the regulations of the Secretary of the Treasury thereunder, whether the certificates and stamps be considered individual or composite obligations of the United States, the tearing of stamps from certificates with intent to use them without the remainder of the certificates signed by the purchaser and thus defraud the United States by defeating the purposes of the law, the circulars of the Secretary, and the terms and conditions indorsed on the certificate, constitutes an alteration of both or either within section 262 of Title 18, Criminal Code and Criminal Procedure, making it an offense to falsely make or alter any obligation or other security of the United States with intent to defraud, and section 265 of the same title, making it an offense to have possession of such altered obligation or security with such intent. U. S. v. Sacks (N. Y. 1921) 42 S. Ct. 38, 257 U. S. 37, 66 L. Ed. 118.

5. Conspiracy.—It was a violation of section 88 of Title 18, Criminal Code and Criminal Procedure, relative to conspiracies to defraud the United States, section 262 of Title 18, relative to the alteration of United States securities and obligations, and this section, for defendants to purchase certificates with stamps affixed thereto from persons not authorized to sell them, knowing that they were not transferable, and were not payable

to any one save the original purchaser, and to conspire to obtain blank certificates of a maturity value in excess of $100, and affix thereto stamps detached from other certificates purchased by them, and write thereon the name of some person other than any one of the defendants, and present them for payment. U. S. v. Janowitz (N. Y. 1921) 42 S. Ct. 40, 257 U. S. 42, 66 L. Ed. 120.

§ 758. Bonds and certificates not to bear circulation privilege. None of the bonds authorized by section 752 of this title nor of the certificates authorized by sections 754 and 757 of this title shall bear the circulation privilege. (Sept. 24, 1917, c. 56, § 7, 40 Stat. 291.)

Editorial comment.—See comment on section 747 of this title.

Cross-References

The portion of the original text of this section omitted here is incorporated in section 747 of this title.

§ 759. First Liberty loan; appropriation to pay expenses. In order to pay all necessary expenses, including rent, connected with any operations under sections 746, 755, 759, 764, and 804 of this title, a sum not exceeding one-tenth of 1 per centum of the amount of certificates of indebtedness therein authorized is hereby appropriated, or as much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct: *Provided*, That, in addition to the reports required by law, the Secretary of the Treasury shall, annually, on the first Monday in December, transmit to the Congress a detailed statement of all expenditures under such sections. (Apr. 24, 1917, c. 4, § 8, 40 Stat. 37.)

Historical Note

This section was part of the first Liberty Bond Act of April 24, 1917, cited to the text.

The words "sections 746, 755, 759, 764, and 804 of this title" are a translation of the words "this act" appearing in the original text.

Notes of Decisions

1. Contract for liberty loan posters.—Where both plaintiff's design for posters to aid in the sale of liberty bonds and its bid for 500,000 lithographic copies thereof was accepted but about 10 days after delivery the treasury department discovered that the quotation was inaccurate and called upon plaintiff for 500,000 more copies with the correct quotation thereon, there was no implied warranty that the quotation was correct and plaintiff was entitled to recover the contract price for the posters containing the erroneous quotation. American Lithographic Co. v. U. S. (1922) 57 Ct. Cl. 340.

There being an appropriation for all necessary expenses connected with the sale of Liberty bonds, to be expended in the discretion of the Secretary of the Treasury, the latter was not required by R. S. § 3786 (superseded) to have all printing and lithographing done at the Government Printing Office. Id.

§ 760. Second and third Liberty loans; appropriation to pay expenses of issue of bonds; report of expenditures. In order to pay all necessary expenses, including rent, connected with any operations under sections 752 to 754, 757, 758, 760, 764 to 766, 769, 771, and 773 of this title, a sum not exceeding one-fifth of 1 per centum of the amount of bonds and war-saving certificates and one-tenth of 1 per centum of the amount of certificates of indebtedness therein authorized is hereby appropriated, or as much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct: *Provided*,

That in addition to the reports required by law, the Secretary of the Treasury shall, annually on the first Monday in December, transmit to the Congress a detailed statement of all expenditures under such sections. (Sept. 24, 1917, c. 56, § 10, 40 Stat. 292.)

Editorial comment.—As to the words "sections 752 to 754 * * * of this title" see the comment on section 752 of this title.

Historical Note

This section was part of the Second Liberty Bond Act of Sept. 24, 1917, cited to the text.

§ 761. Appropriations for expense available for subsequent public debt issues. The appropriations contained in sections 759 and 760 of this title, are hereby made applicable to any operations arising in connection with any public debt issues made subsequently to June 30, 1921, pursuant to the authority contained in sections 746, 752 to 755, 757 to 760, 764 to 766, 769, 771, 773 and 804 of this title, and section 84 of Title 12, as amended and supplemented: *Provided*, That with respect to operations on account of any such issue made after June 16, 1921, such appropriations shall be available only until the close of the fiscal year next following the fiscal year in which such issue was made. (May 29, 1920, c. 214, § 1, 41 Stat. 646; June 16, 1921, c. 23, § 1, 42 Stat. 36.)

Editorial comment.—See the comment on section 752 of this title as to the omission of sections 747 and 801 from the sections enumerated in this section.

Historical Note

This was a provision of the Second Deficiency Act of June 16, 1921, cited to the text. It superseded a provision of Act May 29, 1920, c. 214, § 1, also cited to the text, which made the appropriations referred to unavailable after June 30, 1921, and required the unexpended balances to be covered into the Treasury.

The original text of this section referred to public debt issues made "pursuant to the authority contained in the First Liberty Bond Act or the Second Liberty Bond Act, as amended and supplemented."

§ 762. Expenses of sale and distribution of war-savings and thrift stamps. The Secretary of the Treasury is authorized and directed to advance to the Postmaster General from the appropriation for expenses of preparation and issuance of war-savings stamps such sums as may be necessary to meet the expenses of the Post Office Department for clerical service and other necessary expenditures in connection with the distribution, sale, and keeping of accounts of war-savings and thrift stamps. (Nov. 4, 1918, c. 201, § 1, 40 Stat. 1035.)

Historical Note

This was a provision of the "First Deficiency Appropriation Act, 1919," cited to the text.

§ 763. First and second Liberty loans; bonds; conversion into bonds bearing higher interest rate; extension of time for. The privilege of converting 4 per centum bonds of the first Liberty loan converted and 4 per centum bonds of the second Liberty loan into 4¼ per centum bonds, which privilege arose on May 9, 1918, and expired on November 9, 1918, may be extended by the Secretary of the Treasury for such period, upon such terms and conditions and subject to such rules and regulations, as he may prescribe. For the purpose of computing the amount of interest payable, bonds presented for con-

version under any such extension shall be deemed to be converted on the dates for the payment of the semiannual interest on the respective bonds so presented for conversion next succeeding the date of such presentation. (Mar. 3, 1919, c. 100, § 5, 40 Stat. 1311.)

Historical Note

This section was part of the Victory Liberty Loan Act of March 3, 1919, cited to the text.

§ 764. Use of proceeds; exchange of bonds. Bonds shall be issued from time to time upon the interchange of bonds of different denominations and of coupon and registered bonds and upon the transfer of registered bonds issued under sections 1 and 4 of the Act of April 24, 1917 (chapter 4, Fortieth Statutes, page 36), under such rules and regulations as the Secretary of the Treasury shall prescribe, and, if and to the extent that the privilege of conversion provided for in such bonds shall arise and shall be exercised, in accordance with such provision for such conversion. The proceeds of the bonds authorized by section 752 of this title may be used for the purpose of defraying expenditures, and to reimburse the Treasury for expenditures not covered by previous issues of bonds, on account of the Panama Canal; to raise the money necessary to carry into effect the provisions of section 79 of Title 50, relative to the production of nitrates; to meet expenditures and reimburse the Treasury for expenditures on account of the Mexican situation, the construction of the armor plate plant, the construction of the Alaskan railway, and the purchase of the Danish West Indies; to meet emergency expenditures directed by the President for naval construction or the expediting thereof; and to redeem the 3 per centum loan of 1908 to 1918, maturing August 1, 1918. (Sept. 24, 1917, c. 56, § 11, 40 Stat. 292; Apr. 24, 1917, c. 4, § 4, 40 Stat. 36.)

Historical Note

This section is based on section 11 of the Second Liberty Bond Act of Sept. 24, 1917, cited to the text, which, prior to its incorporation into the Code, read as follows: "Bonds shall not be issued under authority of sections one and four of said Act approved April twenty-fourth, nineteen hundred and seventeen, in addition to the $2,000,000,000 thereof heretofore issued or offered for subscription, but bonds shall be issued from time to time upon the interchange of such bonds of different denominations and of coupon and registered bonds and upon the transfer of registered bonds, under such rules and regulations as the Secretary of the Treasury shall prescribe, and, if and to the extent that the privilege of conversion provided for in such bonds shall arise and shall be exercised, in accordance with such provision for such conversion. No bonds shall be issued under authority of the several sections of Acts and of the resolution mentioned in said section four of the Act approved April twenty-fourth, nineteen hundred and seventeen; but the proceeds of the bonds herein authorized may be used for purposes mentioned in said section four of the Act of April twenty-fourth, nineteen hundred and seventeen, and as set forth in the Acts therein enumerated."

Section 1 of the Act of April 24, 1917, referred to in the section just quoted is set forth in the historical note to section 746 of this title. Section 4, also referred to, and cited to the text, was as follows: "The Secretary of the Treasury, in his discretion, is hereby authorized to issue the bonds not already issued heretofore authorized by section thirty-nine of the Act approved August fifth, nineteen hundred and nine, entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes'; section one hundred and twenty-four of the Act approved June third, nineteen hundred and sixteen, entitled 'An Act for making further and more effectual provision for the national defense, and for other purposes'; section thirteen of the Act of September seventh, nineteen hundred and sixteen, entitled 'An Act to es-

tablish a United States shipping board for the purpose of encouraging, developing, and creating a naval auxiliary and a naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries, to regulate carriers by water engaged in the foreign and interstate commerce of the United States, and for other purposes'; section four hundred of the Act approved March third, nineteen hundred and seventeen, entitled 'An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes'; and the public resolution approved March fourth, nineteen hundred and seventeen entitled 'Joint resolution to expedite the delivery of materials, equipment, and munitions and to secure more expeditious construction of ships,' in the manner and under the terms and conditions prescribed in section one of this Act.

"That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, in addition to the sum authorized in section one of this Act, such additional amount, not exceeding $63,945,460 as may be necessary to redeem the three per cent loan of nineteen hundred and eight to nineteen hundred and eighteen, maturing August first, nineteen hundred and eighteen, and to issue therefor bonds of the United States in the manner and under the terms and conditions prescribed in section one of this Act."

The sections and joint resolution mentioned in the section last quoted are set forth or referred to in the historical note to section 745 of this title.

Cross-References

A portion of the original text of Act Sept. 24, 1917, c. 56, § 11, omitted here, amended Act Feb. 4, 1910, c. 25, § 2, 36 Stat. 192, and is incorporated in section 769 of this title.

§ 765. Bonds receivable in payment of estate or inheritance taxes. Any bonds of the United States bearing interest at a higher rate than 4 per centum per annum (whether issued under section 752 of this title or upon conversion of bonds issued under that section or under the Act of April 24, 1917, (chapter 4, Fortieth Statutes, page 35), which have been owned by any person continuously for at least six months prior to the date of his death, and which upon such date constitute part of his estate, shall, under rules and regulations prescribed by the Secretary of the Treasury, be receivable by the United States at par and accrued interest in payment of any estate or inheritance taxes imposed by the United States, under or by virtue of any present or future law upon such estate or the inheritance thereof. (Sept. 24, 1917, c. 56, § 14; Apr. 4, 1918, c. 44, § 6, 40 Stat.*)

* "505" should be added to the credit to the text.

Historical Note

This is section 14 of the Second Liberty Bond Act of Sept. 24, 1917, as added by Act April 4, 1918, c. 44, § 6, cited to the text.

Notes of Decisions

1. Bonds converted less than 6 months before death.—Under this section, Liberty Loan 4 per cent. bonds issued to subscriber November 15, 1917, and converted by him into Third Liberty 4¼ per cent. bonds issued to him May 9, 1918, were not, on his death May 27, 1918, receivable at face value in payment of the federal estate tax on the estate of the deceased. This section requires the holding of the 4¼ per cent. bonds, however acquired, to have been for a time not less than six months next preceding the death, in order to be receivable at face value in payment of a tax. Smietanka v. Ullman (C. C. A. Ill. 1921) 275 F. 814.

§ 766. Bonds or certificates payable in foreign money. Any of the bonds or certificates of indebtedness authorized by sections 752 to 754, 757, 758, 760, 764 to 766, 769, 771, 773, and 774 of this title may be issued by the Secretary of the Treasury payable, principal and interest, in any foreign money or foreign moneys, as expressed in

such bonds or certificates, but not also in United States gold coin, and he may dispose of such bonds or certificates in such manner and at such prices, not less than par, as he may determine, without compliance with the provisions of the third paragraph of section 752 of this title. In determining the amount of bonds and certificates issuable under said section* the dollar equivalent of the amount of any bonds or certificates payable in foreign money or foreign moneys shall be determined by the par of exchange at the date of issue thereof, as estimated by the Director of the Mint, and proclaimed by the Secretary of the Treasury, in pursuance of the provisions of section 372 of this title. The Secretary of the Treasury may designate depositaries in foreign countries, with which may be deposited as he may determine all or any part of the proceeds of any bonds or certificates authorized by said sections payable in foreign money or foreign moneys. (Sept. 24, 1917, c. 56, § 16; Apr. 4, 1918, c. 44, § 6, 40 Stat.†)

* "said section" is a translation of "this Act" and should be "said sections."
† "505" should be added to the credit to the text.

Editorial comment.—As to the words "sections 752 to 754 * * * of this title" see the comment on section 752 of this title.

Historical Note

This is section 16 of the Second Liberty Bond Act of Sept. 24, 1917, as added by Act April 4, 1918, c. 44, § 6, cited to the text.

§ 767. Sinking fund for retirement of Liberty bonds and notes. There is created in the Treasury a cumulative sinking fund for the retirement of bonds and notes issued under sections 752 to 755 and 757 of this title (the First Liberty Bond Act, the Second Liberty Bond Act, the Third Liberty Bond Act, the Fourth Liberty Bond Act, and the Victory Liberty Loan Act) and the First Liberty Bond Act (April 24, 1917, chapter 4, Fortieth Statutes, page 35), and outstanding on July 1, 1920, and of bonds and notes thereafter issued, under any of such sections, for refunding purposes. The sinking fund and all additions thereto are hereby appropriated for the payment of such bonds and notes at maturity, or for the redemption or purchase thereof before maturity by the Secretary of the Treasury at such prices and upon such terms and conditions as he shall prescribe, and shall be available until all such bonds and notes are retired. The average cost of the bonds and notes purchased shall not exceed par and accrued interest. Bonds and notes purchased, redeemed, or paid out of the sinking fund shall be canceled and retired and shall not be reissued. For each fiscal year, until all such bonds and notes are retired there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the purposes of such sinking fund, an amount equal to the sum of (1) 2½ per centum of the aggregate amount of such bonds and notes outstanding on July 1, 1920, less an amount equal to the par amount of any obligations of foreign governments held by the United States on July 1, 1920, and (2) the interest which would have been payable during the fiscal year for which the appropriation is made on the bonds and notes purchased, redeemed, or paid out of the sinking fund during such year or in previous years.

The Secretary of the Treasury shall submit to Congress at the

beginning of each regular session a separate annual report of the action taken under the authority contained in this section. (Mar. 3, 1919, c. 100, § 6, 40 Stat. 1311; Mar. 2, 1923, c. 179, 42 Stat. 1427.)

Historical Note

This is part of section 6 of the Victory Liberty Loan Act of March 3, 1919, cited to the text, as amended by Act March 2, 1923, c. 179, also cited to the text.

The amendment added the provision in the first sentence concerning bonds and notes issued after July 1, 1920.

A portion of the original text of section 6 of the Act of March 3, 1919, omitted here, repealed R. S. §§ 3688, 3694, 3695 and 3696, and so much of R. S. § 3689, as provided a permanent annual appropriation of 1 per centum of the entire debt of the United States to be set apart as a sinking fund.

Cross-References

As to the First Liberty Bond Act of April 24, 1917, mentioned in this section, see the historical note to section 746 of this title.

§ 768. Bonds and certificates of indebtedness payable in gold coin. Any bonds and certificates of indebtedness of the United States issued after February 4, 1910, shall be payable, principal and interest, in United States gold coin of the standard of value on February 4, 1910; and such bonds may be issued in such denomination as may be prescribed by the Secretary of the Treasury. (Feb. 4, 1910, c. 25, § 1, 36 Stat. 192; Mar. 3, 1917, c. 159, § 400, 39 Stat. 1002; Mar. 4, 1917, c. 191, 39 Stat. 1201; Apr. 24, 1917, c. 4, § 1, 40 Stat. 35.)

Historical Note

This is section 1 of the Act of Feb. 4, 1910, c. 25, cited to the text. Similar provisions concerning the medium of payment, applicable only to particular bond issues, were contained in the Acts of March 3, 1917, and April 24, 1917, and the Joint Resolution of March 4, 1917, cited to the text.

§ 769. Certificates of indebtedness; taxation; expense of issue. Any certificates of indebtedness issued after February 4, 1910, shall be exempt from all taxes or duties of the United States (but, in the case of certificates issued after September 1, 1917, only if and to the extent provided in connection with the issue thereof), as well as from taxation in any form by or under State, municipal, or local authority; and a sum not exceeding one-tenth of 1 per centum of the amount of any certificates of indebtedness issued is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising, and issuing the same. (Feb. 4, 1910, c. 25, § 2, 36 Stat. 192; Sept. 24, 1917, c. 56, § 11, 40 Stat. 292.)

Historical Note

This is Act Feb. 4, 1910, c. 25, § 2, cited to the text, as amended by Act Sept. 24, 1917, c. 56, § 11, also cited to the text.

The amendment inserted the matter in parenthesis.

Cross-References

A portion of Act Sept. 24, 1917, c. 56, § 11, omitted here, is incorporated in section 764 of this title.

§ 770. Certain bonds not receivable as security for national bank circulating notes. The bonds issued under section 39 of the Act of August 5, 1909 (chapter 6, Thirty-sixth Statutes, page 117), which carry a provision that such bonds shall not be receivable by the Treasurer of the United States as security for the issue of circulating

notes to national banks shall not be receivable for that purpose. (Mar. 2, 1911, c. 195, 36 Stat. 1013.)

Historical Note

Prior to its incorporation into the Code, this section read as follows: "That the Secretary of the Treasury be, and he is hereby, authorized to insert in the bonds to be issued by him under section thirty-nine of an Act entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States and for other purposes,' approved August fifth, nineteen hundred and nine, a provision that such bonds shall not be receivable by the Treasurer of the United States as security for the issue of circulating notes to national banks; and the bonds containing such provision shall not be receivable for that purpose."

The requirement that the provision mentioned should be inserted in the bonds was superseded, or rendered obsolete, by Act Sept. 24, 1917, c. 56, § 11, 40 Stat. 292, prohibiting the issuance of bonds under Act Aug. 5, 1909, c. 6, § 39, 36 Stat. 117.

Cross-References

Act Aug. 5, 1909, c. 6, § 39, mentioned in this section, is set out in the historical note to section 745 of this title.

§ 771. **Deposit of proceeds of sales of Liberty bonds, certificates of indebtedness, and war-savings certificates.** The Secretary of the Treasury, in his discretion, is authorized to deposit, in such incorporated banks and trust companies as he may designate, the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness and war-savings certificates authorized by this section and sections 752 to 754, 757, 758, 760, 764 to 766, 769, 773, and 774 of this title, and by the "First Liberty Bond Act" (Act of April 24, 1917, chapter 4, Fortieth Statutes, page 35) and arising from the payment of income taxes, and such deposits shall bear such rate or rates of interest, and shall be secured in such manner, and shall be made upon and subject to such terms and conditions as the Secretary of the Treasury may from time to time prescribe: *Provided*, That the provisions of sections 141 to 143 of Title 12, with reference to the reserves required to be kept by national banking associations and other member banks of the Federal reserve system, shall not apply to deposits of public moneys by the United States in designated depositaries. (Sept. 24, 1917, c. 56, § 8, 40 Stat. 291; Oct. 3, 1917, c. 63, § 214, 40 Stat. 308*; Apr. 4, 1918, c. 44, § 5, 40 Stat. 504.)

* "Oct. 3, 1917, c. 63, § 214, 40 Stat. 308" should probably be "April 24, 1917, c. 4, § 7, 40 Stat. 37."

Editorial comment.—Act April 24, 1917, c. 4, § 7, 40 Stat. 37, seems to furnish the authority for the reference in this section to the First Liberty Bond Act. If that section is still in force, it is not clear why the following proviso contained therein, should be omitted: "Provided, That the amount so deposited shall not in any case exceed the amount withdrawn from any such bank or trust company and invested in such bonds or certificates of indebtedness plus the amount so invested by such bank or trust company, and such deposits shall be secured in the manner required for other deposits by section fifty-one hundred and fifty-three, Revised Statutes, and amendments thereto."

As to the words "sections 752 to 754 * * * of this title," see comment on section 752 of this title.

Historical Note

This seems to be a combination of provisions contained in Act Sept. 24, 1917, c. 56, § 8, as amended by Act April 4, 1918, c. 44, § 5, cited to the text and provisions contained in Act April 24, 1917, c. 4, § 7. Section 8 of the Act of Sept. 24, 1917, as originally enacted applied to proceeds of the sale of bonds, certificates of indebtedness, and war savings certificates, authorized by that act. It was amended to include also proceeds of income and excess profits taxes.

Section 7 of the Act of April 24, 1917, applied to proceeds of bonds and certificates of indebtedness authorized by that act.

Upon incorporation into the Code, the reference to excess profits taxes in Act Sept. 24, 1917, as amended, was apparently omitted as obsolete.

Act Sept. 24, 1918, c. 176, § 3, 40 Stat. 966, extending section 8 of the Act of Sept. 24, 1917, to war profits taxes, was doubtless omitted for the same reason.

A portion of Act Sept. 24, 1917, § 8, omitted here, provided for the designation of depositaries of public moneys in foreign countries until six months after the termination of the war with Germany. It was doubtless omitted as temporary and obsolete.

§ 772. **Fiscal agents.** Any incorporated bank or trust company designated as a depositary by the Secretary of the Treasury under the authority conferred by section 771 of this title, which gives security for such deposits as, and to amounts, by him prescribed, may, upon and subject to such terms and conditions as the Secretary of the Treasury may prescribe, act as a fiscal agent of the United States in connection with the operations of selling and delivering any bonds, certificates of indebtedness, or war-savings certificates of the United States. (July 9, 1918, c. 142, § 4, 40 Stat. 845.)

Historical Note

This section was part of the Fourth Liberty Bond Act of July 9, 1918, cited to the text.

§ 773. **Performance of services by postal employees in connection with bonds, etc.** In connection with the operations of advertising, selling, and delivering any bonds, certificates of indebtedness, or war-savings certificates of the United States provided for in this section and sections 752 to 754, 757, 758, 760, 764 to 766, 769, and 771 of this title, the Postmaster General, under such regulations as he may prescribe, shall require, at the request of the Secretary of the Treasury, the employees of the Post Office Department and of the Postal Service to perform such services as may be necessary, desirable, or practicable, without extra compensation. (Sept. 24, 1917, c. 56, § 9, 40 Stat. 292.)

Editorial comment.—See comment on section 752 of this title concerning the words "sections 752 to 754 * * * of this title."

Historical Note

This section was part of the Second Liberty Bond Act of Sept. 24, 1917, cited to the text.

Notes of Decisions

1. Treasury regulations.—In (1918) 31 Op. Atty. Gen. 234, the Attorney General declined compliance with the request of the Postmaster General for an opinion as to the validity of articles 9 and 10 of the Treasury Regulations, relating to the redemption of war saving certificates and stamps of deceased owners, because the question was not one arising in the administration of the Post Office Department. It was said that the payment or redemption of these certificates and stamps by postmasters or employees of the Post Office Department, if arranged by comity, must be in accordance with the regulations prescribed by the Secretary of the Treasury.

§ 774. **Short titles of Acts.** The short titles of the following Acts referred to or included, wholly or partly in this chapter, shall be as follows: (1) The short title of the Act of April 24, 1917 (chapter 4, Fortieth Statutes, page 35), shall be "First Liberty Bond Act."

(2) The short title of the Act of September 24, 1917 (chapter 56, Fortieth Statutes, page 288), shall be "Second Liberty Bond Act."

(3) The short title of the Act of April 4, 1918 (chapter 44, Fortieth Statutes, page 502), shall be "Third Liberty Bond Act."

(4) The short title of the Act of July 9, 1918 (chapter 142, Fortieth Statutes, page 844), shall be "Fourth Liberty Bond Act."

(5) The short title of the Act of September 24, 1918 (chapter 176, Fortieth Statutes, page 965), shall be "Supplement to Second Liberty Bond Act."

(6) The short title of the Act of March 3, 1919 (chapter 100, Fortieth Statutes, page 1309), shall be "Victory Liberty Loan Act." (Apr. 24, 1917, c. 4, § 9, 40 Stat. 506;* Sept. 24, 1917, c. 56, § 17, 40 Stat. 506;* Apr. 4, 1918, c. 44, § 8,† 40 Stat. 506; July 9, 1918, c. 142, § 5, 40 Stat. 845; Sept. 24, 1918, c. 176, § 7, 40 Stat. 967; Mar. 3, 1919, c. 100, § 11, 40 Stat. 1314.)

* "40 Stat. 506" should be omitted.
† "§ 8" should be "§§ 6–8."

Historical Note

This section is a combination of provisions contained in the various sections cited to the text. Section 17 of the Act of Sept. 24, 1917, and section 9 of the Act of April 24, 1917, cited to the text, were added to those acts by Act April 4, 1918, c. 44, §§ 6, 7, 40 Stat. 505, 506.

OBLIGATIONS OF FOREIGN GOVERNMENTS

§ 801. Conversion into obligations bearing higher interest rate; sale of obligations; redemption of United States bonds. Except as otherwise provided in sections 805 to 809 of this title, the Secretary of the Treasury is authorized, from time to time, to exercise in respect to any obligations of foreign governments acquired under authority of the First or Second Liberty Bond Acts (April 24, 1917, chapter 4, Fortieth Statutes, page 35; September 24, 1917, chapter 56, Fortieth Statutes, page 288) any privilege of conversion into obligations bearing interest at a higher rate provided for in or pursuant to such Acts, and to convert any short-time obligations of foreign governments which may have been purchased under the authority of such Acts into long-term obligations of such foreign governments, respectively, maturing not later than the bonds of the United States then last issued under the authority of such Acts, and in such form and terms as the Secretary of the Treasury may prescribe; but the rate or rates of interest borne by any such long-time obligations at the time of their acquisition shall not be less than the rate borne by the short-time obligations so converted into such long-time obligations; and, under such terms and conditions as he may from time to time prescribe, to receive payment, on or before maturity, of any obligations of such foreign governments acquired on behalf of the United States under authority of such Acts, and, with the approval of the President, to sell any of such obligations (but not at less than the purchase price with accrued interest unless otherwise hereafter provided by law), and to apply the proceeds thereof, and any payments so received from foreign governments on account of the principal of their said obligations, to the redemption or purchase, at not more than par and accrued interest, of any bonds of the United States issued under authority of such Acts; and if such bonds can not be so redeemed or purchased the Secretary of the

Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to redemption or which can be purchased at not more than par and accrued interest. (Sept. 24, 1917, c. 56, § 3, 40 Stat. 289.)

Historical Note

This section was part of the second Liberty Bond Act of Sept. 24, 1917, cited to the text.

Authority to acquire obligations of foreign governments engaged in war with enemies of the United States was contained in section 2 of the First Liberty Bond Act of April 24, 1917, and section 2 of the Second Liberty Bond Act of Sept. 24, 1917, as amended. See the historical notes to sections 746 and 752 of this title.

§ 802. Conversion of short-time obligations of foreign governments into long-time obligations; interest; payment of obligations. Except as otherwise provided in sections 805 to 809 of this title, the Secretary of the Treasury is authorized from time to time to convert any short-time obligations of foreign governments which may be received under the authority of paragraph (a) of section 7 of the Act of March 3, 1919 (chapter 100, Fortieth Statutes, page 1312), into long-time obligations of such foreign governments, respectively, maturing not later than October 15, 1938, and in such form and terms as the Secretary of the Treasury may prescribe; but the rate or rates of interest borne by any such long-time obligations at the time of their acquisition shall not be less than the rate borne by the short-time obligations so converted into such long-time obligations; and, under such terms and conditions as he may from time to time prescribe, to receive payment, on or before maturity, of any obligations of such foreign governments acquired on behalf of the United States under authority of this section, and said paragraph "a" of section 7 of the Act of March 3, 1919 (chapter 100, Fortieth Statutes, page 1312), and, with the approval of the President, to sell any of such obligations (but not at less than par with accrued interest unless otherwise hereafter provided by law), and to apply the proceeds thereof, and any payments so received from foreign governments on account of the principal of such obligations, to the redemption or purchase, at not more than par and accrued interest, of any bonds of the United States issued under the authority of the First Liberty Bond Act or section 752 of this title, and if such bonds can not be so redeemed or purchased, the Secretary of the Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to redemption or which can be purchased at not more than par and accrued interest. (Mar. 3, 1919, c. 100, § 7, 40 Stat. 1312.)

Historical Note

This is paragraph (b) of section 7 of the Victory Liberty Loan Act of March 3, 1919, cited to the text.

Paragraph (a) of that section authorized the Secretary of the Treasury, with the approval of the President, until the expiration of 18 months after the termination of the war with Germany, to establish credits for specified purposes for foreign governments engaged in war with the enemies of the United States, and, to the extent of such credits to make advances and receive obligations of such foreign governments, and to enter into arrangements with such foreign governments for establishing such credits, and for the payment of such obligations. It was doubtless omitted as temporary and obsolete.

Paragraph (c) appropriated, for the purposes of that section, the unexpended balances of appropriations made by sec-

tion 2 of the First Liberty Bond Act, and by section 2 of the Second Liberty Bond Act, as amended.

See the historical note to section 746 of this title, as to the First Liberty Bond Act mentioned in this section.

§ 803. **Maturity of obligations of foreign governments.** Except as otherwise provided in sections 805 to 809 of this title, the obligations of foreign governments acquired by the Secretary of the Treasury by virtue of the provisions of the First Liberty Bond Act (April 24, 1917, chapter 4, Fortieth Statutes, page 35), and the Second Liberty Bond Act (September 24, 1917, chapter 56, Fortieth Statutes, page 288), and amendments and supplements thereto, shall mature at such dates as shall be determined by the Secretary of the Treasury: *Provided,* That such obligations acquired by virtue of the provisions of the First Liberty Bond Act, or through the conversion of short-time obligations acquired under such Act, shall mature not later than June 15, 1947, and all other such obligations of foreign governments shall mature not later than October 15, 1938. (Mar. 3, 1919, c. 100, § 8, 40 Stat. 1313.)

Historical Note

This section was part of the Victory Liberty Loan Act of March 3, 1919, cited to the text.

Authority for the acquisition of obligations of foreign governments was contained in section 2 of the First Liberty Bond Act of April 24, 1917, c. 4, 40 Stat. 35, and section 2 of the Second Liberty Bond Act of Sept. 24, 1917, c. 56, 40 Stat. 288, as amended. See the historical notes to sections 746 and 752 of this title.

§ 804. **Payment before maturity or sale of obligations of foreign governments.** Except as otherwise provided in sections 805 to 809 of this title, the Secretary of the Treasury, under such terms and conditions as he may prescribe, is authorized to receive on or before maturity payment for any obligations of foreign governments purchased on behalf of the United States, under the First Liberty Bond Act (April 24, 1917, chapter 4, Fortieth Statutes, page 35), and to sell at not less than the purchase price any of such obligations and to apply the proceeds thereof, and any payments made by foreign governments on account of their said obligations to the redemption or purchase at not more than par and accrued interest of any bonds of the United States issued under authority of such Act; and if such bonds are not available for this purpose the Secretary of the Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to call or which may be purchased at not more than par and accrued interest. (Apr. 24, 1917, c. 4, § 3, 40 Stat. 35.)

Historical Note

This section was part of the First Liberty Bond Act of April 24, 1917, cited to the text. See the historical note to section 746 of this title.

§ 805. **World War Foreign Debt Commission; members; appointment.** A World War Foreign Debt Commission is created consisting of eight members, one of whom shall be the Secretary of the Treasury who shall serve as chairman, and seven of whom shall be appointed by the President, by and with the advice and consent of the Senate. Not more than four members so appointed shall be from the same

political party. (Feb. 9, 1922, c. 47, § 1, 42 Stat. 363; Feb. 28, 1923, c. 146, § 2, 42 Stat. 1326.)

Historical Note

This is Act Feb. 9, 1922, c. 47, § 1, cited to the text, as amended by Act Feb. 28, 1923, c. 146, § 2, also cited to the text.

The amendment increased the number of members of the commission, and the number to be appointed by the President, and added the last sentence.

Section 3 of said Act Feb. 28, 1923, c. 146, 42 Stat. 1327, read as follows:

"That the provisions of section 2 of this Act shall not affect the tenure of office of any person who is a member of the World War Foreign Debt Commission at the time this Act takes effect."

Cross-References

The other sections of Act Feb. 9, 1922, c. 47, are set forth in sections 806 to 809 of this title.

§ 806. Powers of commission as to refunding, conversion, or extension of time of payment of obligations of foreign governments. Subject to the approval of the President, the commission created by section 805 of this title is authorized to refund or convert, and to extend the time of payment of the principal or the interest, or both, of any obligation of any foreign government held on February 9, 1922, by the United States of America, or any obligation of any foreign government thereafter or hereafter received by the United States of America (including obligations held by the United States Grain Corporation, the War Department, the Navy Department, or the American Relief Administration), arising out of the World War, into bonds or other obligations of such foreign government in substitution for the bonds or other obligations of such government held on February 9, 1922, or thereafter or hereafter by the United States of America, in such form and of such terms, conditions, date or dates of maturity, and rate or rates of interest, and with such security, if any, as shall be deemed for the best interests of the United States of America. (Feb. 9, 1922, c. 47, § 2, 42 Stat. 363; Feb. 28, 1923, c. 146, § 1, 42 Stat. 1325.)

Editorial comment.—It is not clear why the last proviso of this section, set out in the historical note, was omitted. It is also not clear why the concluding words of the first proviso, as amended, authorizing settlements "subject to the approval of the Congress by Act or joint resolution" should have been omitted.

Settlements of the indebtedness of Great Britain, Finland, Hungary, Lithuania, and Poland, made by the World War Foreign Debt Commission and approved by the President, were approved by Congress in general terms by Act Feb. 28, 1923, c. 146, § 1, 42 Stat. 1325; Act March 12, 1924, c. 52, 43 Stat. 20; Act May 23, 1924, c. 167, 43 Stat. 136; Act Dec. 22, 1924, c. 14, 43 Stat. 719; and Act Dec. 22, 1924, c. 15, 43 Stat. 720, respectively.

Historical Note

This is part of Act Feb. 9, 1922, c. 47, § 2, cited to the text, as amended by Act Feb. 28, 1923, c. 146, § 1, also cited to the text.

As originally enacted, the part of the section carried into the Code was followed by two provisos, the second of which read as follows: "Provided further, That when the bond or other obligation of any such Government has been refunded or converted as herein provided, the authority of the commission over such refunded or converted bond or other obligation shall cease."

The first proviso was amended by the Act of 1923. As amended, it approved and authorized a settlement of the indebtedness of the United Kingdom of Great Britain and Ireland, and then provided, "and settlements with other governments indebted to the United States are hereby authorized to be made upon such terms as the commission, created by the Act approved February 9, 1922, may believe to be just, subject to the approval of the Congress by Act or joint resolution."

§ 807. Exchange of bonds or obligations or cancellation of obligations not authorized. Sections 805 to 809 of this title shall not be construed to authorize the exchange of bonds or other obligations of any foreign government for those of any other foreign government, or cancellation of any part of such indebtedness except through payment thereof. (Feb. 9, 1922, c. 47, § 3, 42 Stat. 363.)

§ 808. Termination of authority granted. The authority granted by sections 805 to 809 of this title shall cease and determine on February 9, 1927. (Feb. 9, 1922, c. 47, § 4, 42 Stat. 363; Jan. 21, 1925, c. 86, 43 Stat. 763.)

Historical Note

This is Act Feb. 9, 1922, c. 47, § 4, cited to the text, as amended by Act Jan. 21, 1925, also cited to the text.

As originally enacted, it terminated the authority granted three years from the passage of the Act.

§ 809. Annual report of commission; copies of refunding agreements for Congress. The annual report of this commission shall be included in the annual report of the Secretary of the Treasury on the state of the finances, but said commission shall immediately transmit to the Congress copies of any refunding agreements entered into, with the approval of the President, by each foreign government upon the completion of the authority granted under the provisions of sections 805 to 809 of this title. (Feb. 9, 1922, c. 47, § 5, 42 Stat. 363.)

MONOPOLIES

See Title 15, Commerce and Trade.

MORTGAGES OF VESSELS

See Title 46, Shipping.

MOTOR BOATS

See Title 46, Shipping.

MUNITIONS PLANTS

See Title 50, War.

NARCOTICS

See Title 21, Food and Drugs; Title 26, Internal Revenue.

NATIONAL AGRICULTURAL CREDIT CORPORATIONS

See Title 12, Banks and Banking.

NATIONAL BANKS

See Title 12, Banks and Banking.

NATIONAL BUDGET AND AUDIT SYSTEM

See Title 31, Money and Finance.

NATIONAL CEMETERIES

See Title 24, Hospitals, Asylums, and Cemeteries.

NATIONAL DEFENSE

See Title 10, Army; Title 32, National Guard; Title 34, Navy; Title 50, War.

NATIONAL FORESTS

See Title 16, Conservation.

[End of Volume]

UNITED STATES CODE ANNOTATED

Title 31
Money and Finance

1953
Cumulative Annual Pocket Part

Replacing prior pocket part in back of volume

Current Laws and Legislative History

Consult

United States Code
Congressional and Administrative News

For Use During
1954

St. Paul, 2 Minn. West Publishing Co.
Brooklyn, 1 N. Y. Edward Thompson Co.

EXPLANATION

This Cumulative Annual Pocket Part contains the laws of a general and permanent nature to November 1, 1953, including laws enacted at the First Session of the 83rd Congress, which adjourned sine die August 3, 1953, as well as the Executive Orders and Proclamations affecting such general and permanent laws.

The laws are classified to the United States Code. Under the same classification will be found the annotations from the decisions of the State and Federal courts construing the statutes.

The annotations close with cases reported in:

Supreme Court Reporter	vol. 73
United States Reports	346
Lawyers' Edition	97
Federal Reporter, Second Series	205
U. S. Court of Appeals, Dist. of Columbia	91
Federal Supplement	113
Federal Rules Decisions	14
Atlantic Reporter, Second Series	98
New York Supplement, Second Series	122
North Eastern Reporter, Second Series	113
North Western Reporter, Second Series	59
Pacific Reporter, Second Series	259
South Eastern Reporter, Second Series	76
Southern Reporter, Second Series	66
South Western Reporter, Second Series	260
Opinions Attorney General	41
Court of Claims	123
Court of Customs and Patent Appeals	39
Tax Court of the United States	19
Board of Tax Appeals	47
American Bankruptcy Reports, New Series	55
Other Standard Reports	

Later statutes and judicial constructions and interpretations will be cumulated in subsequent pamphlets and annual pocket parts.

CITE THIS POCKET PART BY TITLE NUMBER AND SECTION THUS: — U.S.C.A. § —

Copyright, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1953

By

West Publishing Co. & Edward Thompson Company

Copyright, 1953

By

West Publishing Co. & Edward Thompson Company

TITLE 31

MONEY AND FINANCE

Chap.		Sec.
1A.	Accounting and Auditing [New]	65
13.	Credit and Currency Expansion [New]	821
14.	Financial Control of Government Corporations [New]	841

CHAPTER 1.—THE NATIONAL BUDGET AND AUDIT SYSTEM

THE BUDGET

Sec.
16a. Assistant Directors; salary [New].
18a. Development of improved plans for administration of executive agencies [New].
18b. Development of programs for preparing statistical information by executive agencies [New].

GENERAL ACCOUNTING OFFICE

43a. Same; acting Comptroller General during temporary vacancy in offices of Comptroller General and Assistant Comptroller General [New.]
52a. Establishment of additional positions [New].
59. Studies by Comptroller General of restrictions in general appropriation Acts; reports to Congress [New].
60. Analyses of executive agencies' expenditures by Comptroller General; reports to Congressional committees [New].

DEFINITIONS

§ 1. Short title

Sections 1, 2, 11, 13–24, 41–43, 44–47, 49, 52–55, 71, 471, and 581 of this title may be cited as the "Budget and Accounting Act, 1921." June 10, 1921, c. 18, § 1, 42 Stat. 20.

1. Purpose

This chapter was intended to effect as independent a supervision of the accounts of the government as possible. Brunswick v. Elliott, 1939, 103 F.2d 746, 70 App.D.C. 45.

§ 2. Definitions

When used in sections 1, 2, 11, 13–24, 41–43, 44–47, 49, 52–55, 71, 471, and 581 of this title—The terms "department and establishment" and "department or establishment" mean any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including any independent regulatory commission or board and the municipal government of the District of Columbia, but do not include the legislative branch of the Government or the Supreme Court of the United States;

The term "the Budget" means the Budget required by section 11 of this title to be transmitted to Congress;

The term "bureau" means the Bureau of the Budget;

The term "director" means the Director of the Bureau of the Budget; and

The term "assistant director" means the Assistant Director of the Bureau of the Budget.

The term "appropriations" includes, in appropriate context, funds and authorizations to create obligations by contract in advance of appropriations, or any other authority making funds available for obligation or expenditure. As amended Apr. 3, 1939, c. 36, Title II, § 201, 53 Stat. 565; Sept. 12, 1950, c. 946, Title I, pt. I, § 101, 64 Stat. 832.

1950 Amendment. Act Sept. 12, 1950, cited to text, amended section by adding the definition of "appropriations".

Short title. Congress, in enacting sections 18a and 18b of this title, chapter 1A of this title, sections 581b and 581c of this title, and the amendments to this section and sections 11, 14, 16, 22, 23, 24, 581, 581a and 847 of this title, provided by section 1 of Act Sept. 12, 1950, cited to text, that it should be popularly known as the "Budget and Accounting Procedures Act of 1950".

Legislative History: For legislative history and purpose of Act Sept. 12, 1950, see 1950 U.S.Code Cong.Service, p. 3707.

1. Recorder of Deeds in D. C.
Recorder of Deeds of District of Columbia is an officer of the municipal government of the District of Columbia. 1935, 38 Op.Atty.Gen. 155.

THE BUDGET

§ 11. President to transmit Budget to Congress; contents thereof

The President shall transmit to Congress during the first fifteen days of each regular session, the Budget, which shall set forth his Budget message, summary data and text, and supporting detail. The Budget shall set forth in such form and detail as the President may determine—

(a) functions and activities of the Government;

(b) any other desirable classifications of data;

(c) a reconciliation of the summary data on expenditures with proposed appropriations;

(d) estimated expenditures and proposed appropriations necessary in his judgment for the support of the Government for the ensuing fiscal year, except that estimated expenditures and proposed appropriations for such year for the legislative branch of the Government and the Supreme Court of the United States shall be transmitted to the President on or before October 15 of each year, and shall be included by him in the Budget without revision;

(e) estimated receipts of the Government during the ensuing fiscal year, under (1) laws existing at the time the Budget is transmitted and also (2) under the revenue proposals, if any, contained in the Budget;

(f) actual appropriations, expenditures, and receipts of the Government during the last completed fiscal year;

(g) estimated expenditures and receipts, and actual or proposed appropriations of the Government during the fiscal year in progress;

(h) balanced statements of (1) the condition of the Treasury at the end of the last completed fiscal year, (2) the estimated condition of the Treasury at the end of the fiscal year in progress, and (3) the estimated condition of the Treasury at the end of the ensuing fiscal year if the financial proposals contained in the Budget are adopted;

(i) all essential facts regarding the bonded and other indebtedness of the Government; and

(j) such other financial statements and data as in his opinion are necessary or desirable in order to make known in all practicable detail the financial condition of the Government. As amended Sept. 12, 1950, c. 946, Title I, pt. I, § 102(a), 64 Stat. 832.

1950 Amendment. Act Sept. 12, 1950, cited to text, amended section generally by changing the time of submission of the Budget from the first day of each regular session of Congress to any time during the first fifteen days of each such session, by providing for inclusion of the President's message with the Budget, and to provide that the Budget shall set forth, among other things in form and detail determined by the President the functions and activities of the Government.

Omission from repeal of other laws as affecting this section. Section 302(a) of Act Sept. 12, 1950, Title III, cited to text, provided: "The omission of any provision of law from the provisions of law repealed under section 301 [of Act Sept. 12, 1950, c. 946, Title III, 64 Stat. 843] shall not be construed as limiting the application of section 201 or 216 of the Budget and Accounting Act, 1921, as amended [sections 11 and 24 of this title], or the powers of the President thereunder, or as evidencing an intent that such provision was not to be superseded by such sections." Section 301 of said act of Sept. 12, 1950, referred to in such section 302(a), repealed a number of laws relating to the compilation of estimates and the furnishing of certain financial data.

Legislative History: For legislative history and purpose of Act Sept. 12, 1950, see 1950 U.S.Code Cong.Service, p. 3707.

EXECUTIVE ORDER [No. 6715]

FILING OF FUNCTIONAL ORGANIZATION CHARTS WITH THE DIRECTOR OF THE BUREAU OF THE BUDGET

By virtue of and pursuant to the authority vested in me under title II of the act of June 10, 1921 (ch. 18, 42 Stat. 20), it is hereby ordered as follows:

(1) Each executive department, independent establishment, and emergency agency shall file with the Director of the Bureau of the Budget a functional organization chart, indicating its various existing bureaus, divisions, sections, etc., and containing a description of the functions respectively performed, and shall file such additional charts from time to time, as may be necessary to show all changes made therein.

(2) Every executive department, independent establishment, and emergency agency hereafter created shall within 5 days after the appointment of the head thereof file a preliminary functional organization chart with the Director of the Bureau of the Budget.

(3) The Director of the Bureau of the Budget is hereby authorized to prescribe, subject to the approval of the President, such rules and regulations as will indicate the information desired and the form of chart to be furnished.

Franklin D. Roosevelt.

The White House,
May 23, 1934.

§ 12. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(97), 64 Stat. 844

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in this former section, as affected by its repeal, see note under former section 582 of this title.

§ 14. Transmittal of proposed supplemental or deficiency appropriations by President

(a) The President from time to time may transmit to Congress such proposed supplemental or deficiency appropriations as in his judgment (1) are necessary on account of laws enacted after the transmission of the Budget, or (2) are otherwise in the public interest. He shall accompany such proposals with a statement of the reasons therefor, including the reasons for their omission from the Budget.

(b) Whenever such proposed supplemental or deficiency appropriations reach an aggregate which, if they had been contained in the Budget, would have required the President to make a recommendation under subsection (a) of section 13 of this title, he shall thereupon make such recommendation. As amended Sept. 12, 1950, c. 946, Title I, pt. I, § 102 (b), 64 Stat. 833.

1950 Amendment. Subsec. (a) amended by Act Sept. 12, 1950, cited to text, which, in first sentence, substituted "such proposed supplemental or deficiency appropriations" in lieu of "supplemental or deficiency estimates for such appropriations or expenditures", and, in second sentence, substituted "proposals" in lieu of "estimates".

Subsec. (b) amended by Act Sept. 12, 1950, cited to text, which inserted "proposed" preceding "supplemental", and substituted "appropriations" in lieu of "estimates".

Legislative History: For legislative history and purpose of Act Sept. 12, 1950, see 1950 U.S.Code Cong.Service, p. 3707.

§ 16. Bureau of the Budget; Director and Deputy Director; duties; preparation of Budget, etc.

There is created in the Executive Office of the President a bureau to be known as the Bureau of the Budget. There shall be in the bureau a director and a Deputy Director, who shall be appointed by the President and receive basic compensation at the rate of $17,500 and $16,000 per annum, respectively. The assistant director shall perform such duties as the director may designate, and during the absence or incapacity of the director or during a vacancy in the office of director he shall act as director. The Bureau, under such rules and regulations as the President may prescribe, shall prepare the Budget, and any proposed supplemental or deficiency appropriations, and to this end shall have authority to assemble, correlate, revise, reduce, or increase the requests for appropriations of the several departments or establishments. As amended 1939 Reorg. Plan No. I, § 1, eff. July 1, 1939, 4 F.R. 2727, 53 Stat. 1423; Apr. 28, 1942, c. 247, Title III, 56 Stat. 234; Oct. 15, 1949, ch. 695, §§ 3, 4, 63 Stat. 880; Sept. 12, 1950, c. 946, Title I, pt. I, § 102(e), 64 Stat. 833; July 31, 1953, c. 302, Title I, § 101, 67 Stat. 299.

Amendments. Act Sept. 12, 1950, cited to text, amended last sentence of section by striking out "for him" preceding "the Budget", by substituting "and any proposed supplemental or deficiency appropriations" in lieu of "the alternative Budget and any supplemental or deficiency estimates", and by substituting "requests for appropriations" for "estimates".

Act Oct. 15, 1949, cited to text, increased the compensation of the Director of the Bureau from $10,000 to $17,500 per annum, and the Assistant Director from $10,000 to $16,000 per annum.

Act April 28, 1942, cited to text, increased the salary of the assistant director from $7,500 a year to "$10,000 per annum after the date of the enactment of this Act."

Change of Name. Act July 31, 1953, designated the assistant director to be the Deputy Director.

Effective Date. The increased compensation provided for by Act Oct. 15, 1949, cited to text, took effect on the first day of the first pay period which began after Oct. 15, 1949 by the provisions of section 9 of said Act Oct. 15, 1949, which is set out as a note under section 3 of Title 5, Executive Departments and Government Officers and Employes.

Transfer of Functions. Bureau of Budget and all its functions and personnel were transferred to Executive Office of

President by Reorg. Plan No. I, § 1, effective July 1, 1939, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 7–9 of said plan for provisions relating to transfer of records, property, funds, and personnel.

The functions of making, waiving and modifying apportionments of appropriations were transferred to the Director of the Bureau of the Budget by Executive Order, June 10, 1933, No. 6166, § 16 set out in note to section 132 of Title 5.

Cross References. Compensation schedules for professional, subprofessional, and scientific services, see section 673 of Title 5, Executive Departments, Government Officers and Employees.

Legislative History: For legislative history and purpose of Act Sept. 12, 1950, See 1950 U.S.Code Cong.Service, p. 3707. See, also, Act July 31, 1953, 1953 U.S.Code Cong. and Adm. News, p. —.

§ 16a. Assistant Directors; salary

Two positions of Assistant Director are authorized at a salary of $15,000 each per annum in lieu of two positions in grade GS–18. July 31, 1953, c. 302, Title I, § 101, 67 Stat. 299.

Legislative History: For legislative history and purpose of Act July 31, 1953, see 1953 U.S.Code Cong. and Adm.News, p. —.

§ 18. Detailed study of departments and establishments by bureau

Report on Pay and Personnel Practices Followed Overseas. Bureau of the Budget and Civil Service Commission to transmit to Senate and House Committees on or before April 1, 1952, a report on pay and personnel practices followed overseas by Government departments and agencies, see note under section 631 of Title 5, Executive Departments and Government Officers and Employees.

Study of appropriation and contract authorizations granted for the prosecution of the war; report to Congress. The Second Deficiency Appropriation Act of 1944, Act June 28, 1944, c. 304, Title III, § 303, 58 Stat. 623, provided: "The President shall direct the Bureau of the Budget to maintain a continuous study of appropriations and contract authorizations granted for the national defense, war agencies, and the prosecution of the present wars for the purpose of submitting for the consideration of Congress, when the state of the wars make such action possible, a list showing the condition of the balances of each of such appropriations and contract authorizations together with his recommendations for the repeal of such of those funds or portions thereof as are deemed no longer required for the purposes for which they were granted."

Cross Reference. Investigation of nonessential Federal expenditures, see note under Subtitle D, preceding section 3600 of Title 26, Internal Revenue Code.

§ 18a. Development of improved plans for administration of executive agencies

The President, through the Director of the Bureau of the Budget, is authorized and directed to evaluate and develop improved plans for the organization, coordination, and management of the executive branch of the Government with a view to efficient and economical service. Sept. 12, 1950, c. 946, Title I, pt. I, § 104, 64 Stat. 834.

Legislative History: For legislative history and purpose of Act Sept. 12, 1950, see 1950 U.S.Code Cong.Service, p. 3707.

§ 18b. Development of programs for preparing statistical information by executive agencies

The President, through the Director of the Bureau of the Budget, is authorized and directed to develop programs and to issue regulations and orders for the improved gathering, compiling, analyzing, publishing, and disseminating of statistical information for any purpose by the various agencies in the executive branch of the Government. Such regulations and orders shall be adhered to by such agencies. Sept. 12, 1950, c. 946, Title I, pt. I, § 103, 64 Stat. 834.

EXECUTIVE ORDER NO. 10253

June 11, 1951, 16 F.R. 5605

PROVISIONS FOR IMPROVEMENT OF WORK OF FEDERAL EXECUTIVE AGENCIES WITH RESPECT TO STATISTICAL INFORMATION

Section 1. The Director of the Bureau of the Budget (hereinafter referred to as the Director) shall develop programs, and issue regulations and orders, for the improved gathering, compiling, analyzing, publishing, and disseminating of statistical information for any purpose by the various agencies in the executive branch of the Federal Government.

Sec. 2. In order to carry out the provisions of Section 1 of this order, the Director shall maintain a continuing study for the improvement of the statistical work of the agencies in the executive branch of the Federal Government with a view to obtaining the maximum benefit from the funds and facilities available for such work, giving due consideration to the constantly changing character of the various needs for statistical information both within and without the Government and, where the statistical work is primarily concerned with operating programs, giving due consideration to

administrative needs, statutory requirements, and the needs involved in the development of administrative and legislative recommendations. The Director, either upon his own initiative or upon the request of any such agency, shall (a) provide for the interchange of information calculated to improve statistical work, (b) make appropriate arrangements for improving statistical work involving relationships between two or more agencies, and (c) assist the agencies, by other means, to improve their statistical work.

Sec. 3. The following shall be included among the objectives sought in carrying out the provisions of Section 1 hereof:

(a) To achieve an adequate program of statistical work in the agencies of the executive branch, in relation to over-all needs for statistical information, including the filling of gaps and overcoming of weaknesses in presently available statistical information.

(b) To achieve the most effective use of resources available for statistical work by the agencies, in relation to over-all needs.

(c) To minimize the burden upon those furnishing statistical data needed by the various Federal agencies.

(d) To improve the reliability and timeliness of statistical information.

(e) To achieve maximum comparability among the several statistical series and studies.

(f) To improve the presentation of statistical information and of explanations regarding the sources and reliability of such information, and regarding the limitations on the uses that can appropriately be made of it.

Sec. 4. Regulations and orders issued pursuant to Section 1 hereof shall be signed by the Director. When so signed, such regulations and orders shall require no further approval and shall be adhered to by all agencies in the executive branch. Any such regulation or order may pertain to a single agency, a group of agencies, or all agencies in the executive branch.

Sec. 5. In the development of programs and the preparation of regulations and orders for issuance pursuant to Section 1 hereof, the Director shall consult Federal agencies whose activities will be substantially affected, and may consult non-Federal groups to the extent he finds it necessary to carry out the purposes of this order.

Sec. 6. The authority outlined in this order is in addition to and not in substitution for the existing authority of the Director, or of the Bureau of the Budget, with respect to statistical and reporting activities. To the extent, however, that this order conflicts with any previous Executive order affecting statistical or reporting activities, the provisions of this order shall control.

Sec. 7. Nothing in this Executive order shall be construed to apply to the obtaining or releasing of information by the Bureau of Internal Revenue, the Comptroller of the Currency, the Bureau of the Public Debt, the Bureau of Accounts, and the Division of Foreign Assets Control of the Treasury Department, or to the obtaining by any Federal bank supervisory agency of reports and information from banks as provided or authorized by law and in the proper performance of such agency's functions in its supervisory capacity.

§ 19. Powers and duties transferred to bureau

Central Statistical Board and all its functions and personnel were transferred to Bureau of Budget in Executive Office of President by Reorg. Plan No. I, § 2, effective July 1, 1939, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 7–9 of said plan for provisions relating to transfer of records, property, funds, and personnel.

Central Statistical Committee was abolished and its functions transferred to Director of Bureau of Budget, who was also directed to wind up outstanding affairs of such committee, by Reorg. Plan No. I, § 3, effective July 1, 1939, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 7–9 of said plan for provisions relating to transfer of records, property, funds, and personnel.

Division of Bookkeeping and Warrants and its functions were transferred to Bureau of Accounts, and, together with certain other offices and agencies and their functions, were consolidated into Fiscal Service of Treasury Department by Reorg. Plan No. III, § 1(a), eff. June 30, 1940, set out in note under section 133t of Title 5. See, also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds.

Director of bureau as Director of federal reporting services, see section 139a of Title 5, Executive Departments and Government Officers and Employees.

§ 21. Information for bureau by departments and establishments; access to books, papers, etc., thereof

EXECUTIVE ORDER NO. 9384

Oct. 4, 1943, 8 F.R. 13782

SUBMISSION OF REPORTS TO FACILITATE BUDGETING ACTIVITIES OF THE FEDERAL GOVERNMENT

By virtue of the authority vested in me as President of the United States, and particularly by the Budget and Accounting Act, 1921, as amended (Title 31, U. S. Code, secs. 1–24) [sections 1–24 of this title], it is hereby ordered as follows:

1. In order to facilitate budgeting activities, all departments and establishments of the Executive Branch of the Federal Government, now or hereafter authorized by law to plan, propose, undertake, or aid public works and improvement projects financed in whole or in part by the Federal Government, shall prepare and keep up-to-date, by means of at least an annual revision, carefully planned and realistic long-range programs of such projects (all such programs being hereinafter referred to as "advance programs").

2. (a) Whenever any estimate of appropriation is submitted to the Bureau of the Budget (hereinafter referred to as the "Bureau") by such departments and establishments for the carrying out of any public works and improvement project or projects whether by contract, force account, Government plant and hired labor, or other similar procedure, or for the financing of any such project or projects whether by grants-in-aid, loans, or other forms of financial assistance, or for examinations, surveys, investigations, plans and specifications, or other planning activities, whether preliminary or detailed, for any such project or projects

(all such survey and planning activities being hereinafter referred to as "plan preparation"), the advance program or programs relating to the proposed work or expenditure shall be submitted to the Bureau as an integral part of the justification of the estimates presented.

(b) All such departments and establishments shall submit to the Bureau at the earliest possible date estimates of such supplemental appropriations for the fiscal years 1944 and 1945 as are necessary to provide plan preparation for those public works and improvement projects proposed for undertaking during the first three years of their advanced programs. Thereafter, in order that plans for these public works and improvement projects will always be available in advance, all such departments and establishments shall prepare and submit to the Bureau during each fiscal year estimates of such appropriations as may be necessary to provide plan preparation for those projects proposed for undertaking during the succeeding three fiscal years of their advance programs. All such estimates shall be accompanied by recommendations as to the additional legislation, or amendments to existing legislation, that may be necessary to bring projects in their advance programs to an appropriate state of readiness for prompt undertaking when and where needed.

3. The Director of the Bureau, upon the basis of the estimates and advance programs submitted in accordance with the provisions of paragraph 2 of this order, shall report to the President from time to time, but not less than once a year, consolidated estimates and advance programs in the form of an over-all advance program for the Executive Branch of the Government.

4. Before any department or establishment shall submit to the Congress, or to any committee or member thereof, a report relating to, or affecting in whole or in part, its advance programs, or the public works and improvement projects comprising such programs, or the results of any plan preparation for such programs or projects, such report shall be submitted to the Bureau for advice as to its relationship to the program of the President. When such report is thereafter submitted to the Congress, or to any committee or member thereof, it shall include a statement of the advice received from the Bureau.

5. The data and reports required by this order, and such other data, reports, and information as may from time to time be requested by the Bureau concerning advance programs, or the status of any public works and improvement projects included therein, or the results or status of any plan preparation for such programs or projects, shall be submitted to the Bureau in such form and manner as the Director of the Bureau shall prescribe. The Director of the Bureau shall from time to time issue such regulations as he deems necessary to effectuate this order, and his determinations with respect to the scope and application of this order shall be controlling.

6. The term "department and establishments" as used in this Executive Order shall be deemed to include any executive department, independent commission, board, bureau, office, agency, regulatory commission or board, Government-owned or controlled corporation, or other establishment of the Government, and the municipal government of the District of Columbia, but shall not include the legislative or judicial branches of the Government.

7. Executive Order No. 8455, dated June 26, 1940, is hereby revoked.

§ 22. Preparation of departmental requests by heads of departments

The head of each department and establishment shall prepare or cause to be prepared in each year his requests for regular, supplemental, or deficiency appropriations. As amended Sept. 12, 1950, c. 946, Title I, pt. I, § 102(b), 64 Stat. 833.

1950 Amendment. Act Sept. 12, 1950, cited to text, amended section by eliminating the separation of the section into subsections (a) and (b), by eliminating the requirement of the designation of "Budget officers" in each department and establishment, and the provisions prescribing their duties, and by placing the responsibility for the preparation of the departmental estimates on the head of each department and establishment.

Legislative History: For legislative history and purpose of Act Sept. 12, 1950, see 1950 U.S.Code Cong.Service, p. 3707.

§ 23. Time for submission of departmental requests to Bureau; failure to submit

The head of each department and establishment shall submit his requests for appropriations to the Bureau on or before a date which the President shall determine. In case of his failure to do so, the President shall cause such requests to be prepared as are necessary to enable him to include such requests with the Budget in respect to the work of such department or establishment. As amended Sept. 12, 1950, c. 946, Title I, pt. I, § 102(g), 64 Stat. 834.

1950 Amendment. Act Sept. 12, 1950, cited to text, amended section principally by providing that the President shall determine the date for submission of the departmental requests to the Bureau, in lieu of the prior provision that such requests be submitted on or before September 15th of each year.

1. Recorder of Deeds in D. C.

Recorder of Deeds of the District of Columbia is required by law to submit estimates for appropriations for his office to the Commissioners of the District of Columbia, and to submit to hearings by the Commissioners on such estimates. 1935, 38 Op.Atty.Gen. 155.

§ 24. Form and manner of submission of departmental requests

Requests for regular, supplemental, or deficiency appropriations which are submitted to the Bureau by the head of any department or establishment shall be prepared and submitted as the President may determine in accordance with the provisions of section 11 of this title. As amended Sept. 12, 1950, c. 946, Title I, pt. I, § 102(h), 64 Stat. 834.

1950 Amendment. Act Sept. 12, 1950, cited to text, amended section by substituting "Requests for regular, supplemental, or deficiency appropriations which are" in lieu of "The departmental estimates and any supplemental or deficiency estimates", by striking out "in such form, manner and detail" following "submitted", and by substituting "determine in accordance with the provisions of section 11 of this title" in lieu of "prescribe".

Omission from repeal of other laws as affecting this section. Section 302(a) of act Sept. 12, 1950, Title III, cited to text, provided: "The omission of any provision of law from the provisions of law repealed under section 301 [of Act Sept. 12, 1950, c. 946, Title III, 64 Stat. 843] shall not be construed as limiting the application of section 201 or 216 of the Budget and Accounting Act, 1921, as amended [sections 11 and 24 of this title], or the powers of the President thereunder, or as evidencing an intent that such provision was not to be superseded by such sections." Section 301 of said act of Sept. 12, 1950, referred to in such section 302(a), repealed a number of laws relating to the compilation of estimates and the furnishing of certain financial data.

GENERAL ACCOUNTING OFFICE

§ 41. Creation; control and direction of; certain offices abolished; officers, employees, books, papers, etc., transferred to General Accounting Office; seal thereof

Clause "except as otherwise provided in this chapter," has been stricken out.

Coordination of executive bureaus, offices, etc., in interest of national defense and for successful prosecution of war as inapplicable to General Accounting Office, see section 601 of Appendix to Title 50, War.

§ 42. Comptroller General and Assistant Comptroller General

There shall be in the General Accounting Office a Comptroller General of the United States and an Assistant Comptroller General of the United States, who shall be appointed by the President with the advice and consent of the Senate, and shall receive basic compensation at the rate of $17,500 and $16,000 per annum, respectively. The Assistant Comptroller General shall perform such duties as may be assigned to him by the Comptroller General, and during the absence or incapacity of the Comptroller General, or during a vacancy in that office, shall act as Comptroller General. As amended Oct. 15, 1949, c. 695, §§ 3, 4, 63 Stat. 880.

1949 Amendment. Act Oct. 15, 1949, cited to text, increased Comptroller General's compensation from $12,000 to $17,500 per annum, and the Assistant Comptroller General's compensation from $10,330 to $16,000 per annum.

Effective Date. The increased compensation provided for by Act Oct. 15, 1949, cited to text, took effect on the first day of the first pay period which began after Oct. 15, 1949 by the provisions of section 9 of said Act Oct. 15, 1949, which is set out as a note under section 3 of Title 5, Executive Departments and Government Officers and Employees.

Temporary increase in Comptroller General's salary. Act Apr. 5, 1941, c. 40, § 1, 55 Stat. 112, contained the following proviso: "That the salary of the Comptroller General shall be at the rate of $12,000 per annum effective on the date of enactment of this Act, so long as the position is held by the present incumbent."

Temporary increase in Assistant Comptroller General's salary. Act June 26, 1943, c. 145, Title I, § 1, 57 Stat. 181, contained the following proviso: "The salary of the Assistant Comptroller General shall be at the rate of $9,000 per annum effective on the date of enactment of this Act, so long as the position is held by the present incumbent."

Cross Reference. Compensation schedules for professional, subprofessional, and scientific services, see section 673 of Title 5, Executive Departments, Government Officers and Employees.

1. Powers of Comptroller General

Powers of the Comptroller General are extensive but he does not, absent fraud or overreaching, have authority to determine propriety of contract payments when the contracts themselves vest the final power of determination in the contracting executive department. Consolidated Vultee Aircraft Corp. v. U. S., D.C. Del.1951, 97 F.Supp. 948.

§ 43. Same; terms of office; removal from office; retirement

Except as hereinafter provided in this section, the Comptroller General and the Assistant Comptroller General shall hold office for fifteen years. The Comptroller General shall not be eligible for reappointment. The Comptroller General or the Assistant Comptroller General may be removed at any time by joint resolution of Congress after notice and

hearing, when, in the judgment of Congress, the Comptroller General or Assistant Comptroller General has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. Any Comptroller General or Assistant Comptroller General removed in the manner provided in this section shall be ineligible for reappointment to that office. When a Comptroller General or Assistant Comptroller General attains the age of seventy years, he shall be retired from his office.

Any Comptroller General who shall be so retired for age after serving at least ten years in his office, or who completes his term, shall receive an annuity during the remainder of his life equal to the salary payable for his office at the time of retirement or completion of term, except that the annuity of any Comptroller General who completes his term shall be reduced by one-fourth of 1 per centum for each full month he is under the age of sixty-five at such completion. Any Comptroller General who becomes permanently disabled from performing his duties shall be retired and shall receive an annuity during the remainder of his life equal to the salary payable for his office at the time of retirement if he has served at least ten years therein or equal to one-half of such salary if he has served less than ten years. The annuities provided for herein shall be paid by the General Accounting Office. No person receiving benefits under this Act shall receive any other retirement benefits under any other law of the United States. As amended July 28, 1953, c. 256, 67 Stat. 229.

1953 Amendment. Act July 28, 1953, amended section to provide a retirement system for the Comptroller General.

Legislative History: For legislative history and purpose of Act July 28, 1953, see 1953 U.S.Code Cong. and Adm.News, p. —.

§ 43a. Same; acting Comptroller General during temporary vacancy in offices of Comptroller General and Assistant Comptroller General

The Comptroller General shall designate an employee of the General Accounting Office to act as Comptroller General during the absence or incapacity of the Comptroller General and the Assistant Comptroller General, or during a vacancy in both of such offices. June 27, 1944, c. 286, Title I, § 101, 58 Stat. 371.

§ 44. Certain powers and duties transferred to General Accounting Office; conclusiveness of balances certified by Comptroller General

"Sections 1, 2, 11, 13–24, 41–47, 49, 51–55, 71, 471 and 581" should be substituted for sections now appearing and "and provisions of law enacted subsequent to June 30, 1921" has been stricken from the text.

Division of Bookkeeping and Warrants and its functions were transferred to Bureau of Accounts, and, together with certain other offices and agencies and their functions, were consolidated into Fiscal Service of Treasury Department by Reorg.Plan No. III, § 1(a), eff. June 30, 1940, set out in note under section 133t of Title 5. See also sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds.

Transfer of returns office from Interior Department to General Accounting Office, see section 4a of Title 41.

3. Administrative determinations in executive department

Budget and Accounting Act setting up general accounting office under direction of Comptroller General did not make final administrative determinations in executive departments any the less "final settlements" within statute governing subcontractors' suits on contractor's bond under government contract, than they had been before. H. G. Christman Co. v. Michigan Gypsum Co. (C.C.A.Iowa 1936) 85 F.(2d) 474.

The Comptroller General's settlements of claims against United States for overtime pay for manual work as employees of Alaska Road Commission by allowing portions thereof for services rendered within ten years before submission of claims and tacit assent to such settlements by claimants in failing to object thereto constituted binding accords, which merged out claims and created new promises to pay, amounts allowed, so that actions on accounts thus stated were not barred by statute of limitations, though not filed within six years after last dates on which claimants performed services. Marr v. U. S., Ct.Cl. 1952, 106 F.Supp. 204.

The Comptroller General does not, absent fraud or overreaching, have authority to determine propriety of contract payments when the contracts vest final power of determination in the contracting executive department. James Graham Mfg. Co. v. U. S., D.C.Cal.1950, 91 F.Supp. 715.

Where plaintiff entered into cost-plus-fixed-fee contracts with United States Navy Department, and parties intended that question of reimbursable costs should be settled within Navy Department, determination of Navy Department that costs claimed by plaintiff were properly reimbursable was not sub-

ject to contrary decision of Comptroller General. Id.

4. Rulings, weight of

The Comptroller General's statement in letter to one presenting claim against United States for overtime pay for manual work as employee of Alaska Road Commission that sum allowed him by such officer would be paid when money to be appropriated by Congress for payment thereof was available did not render Comptroller General's accord with claimant by agreed settlement for such sum conditional, as inability to pay money unless appropriation was available was consequence of law not of such statement. Marr v. U. S., Ct.Cl.1952, 106 F.Supp. 204.

The government, acting through Comptroller General, may reach accord with one presenting claim against government by settlement and adjustment thereof, thus merging out original claim and defenses which government might otherwise have had against it and setting statute of limitations running anew on new cause of action. Id.

Where the Comptroller General's interpretation of statute was a complete non-sequitur from the facts stated in the submission, a ruling based thereon would not be followed as a course of interpretation and administration that fixed the meaning of the statute involved. Hearne v. U. S., 1946, 68 F. Supp. 786, 107 Ct.Cl. 335, certiorari denied 67 S.Ct. 1752, 331 U.S. 858, 91 L.Ed. 1865.

§ 45. Bureau of Accounts in Post Office Department; Comptroller; administrative examination of accounts and vouchers

The words "at their grades and salaries on July 1, 1921" in the last two lines of this section should be omitted as §§ 661 to 674 of Title 5 govern grades and salaries.

Salary schedules, see section 673 of Title 5, Executive Departments, Government Officers and Employees.

§ 46. Laws governing General Accounting Office; copies of books, records, etc., thereof as evidence

Admissibility of documents, see section 1738 of Title 28, Judiciary and Judicial Procedure.

Federal Rules of Civil Procedure

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rules of Civil Procedure, Rule 44.

§ 49. Forms, systems, and procedure prescribed by Comptroller General.

Cross References. Accounting systems in executive agencies, duties of Comptroller General, and continuation, to the extent he deems necessary, of the authority vested in him by this section, see section 66 of this title.

1. In general

Under this section and section 52(f) the Comptroller is authorized to prescribe by general regulations the forms to be used in "Administrative appropriation and fund accounting in the several Departments and establishments," but no authority is granted by these provisions to limit by regulation or by the adoption of standard forms the authority vested in other officers of the Government to make lawful contracts in its behalf. (1930) 36 Op. Atty. Gen. 289.

§ 50. Forms for use in offices for collecting customs. The Comptroller General shall report to the Secretary of the Treasury official forms to be used in the different offices for collecting the public receipts from customs, and all the manner and form of keeping and stating the accounts of the persons employed therein. (R. S. § 318; July 31, 1894, c. 174, § 4, 28 Stat. 205; June 10, 1921, c. 18, §§ 304, 309, 42 Stat. 24, 25.)

§ 51. Rooms of General Accounting Office [Temporary]

This section is temporary.

§ 52. Attorneys and employees in General Accounting Office; appointment; removal; compensation; duties; official acts; rules and regulations made by Comptroller General

Application of general compensation provisions to employees of the General Accounting Office, see section 933a of Title 5, Executive Departments, and Government Officers and Employees.

2. Regulations, effect of

Generally, a check issued to a deceased person is void, but such rule does not control checks issued by the Treasury of the United States, in view of regulations made under the authority of subdivision (f) of this section and section 49 of this title providing for payment of checks when the payee is deceased. Dresser v. U. S., C.A.Okl.1950, 180 F.2d 410.

§ 52a. Establishment of additional positions

The Comptroller General of the United States hereafter is authorized, subject to the procedures prescribed by section 1105 of Title 5, but without regard to the numerical limitations contained therein, to place two positions in grade GS–18, two positions in grade GS–17, and seven

positions in grade GS–16 in the General Schedule established by the Classification Act of 1949, and such positions shall be in lieu of any positions in the General Accounting Office previously allocated under section 1105 of Title 5. The authority granted herein shall not be construed to require or preclude the reallocation of any positions in the General Accounting Office previously allocated under said section. Aug. 31, 1951, c. 376, Title I, § 101, 65 Stat. 273.

References in Text. The Classification Act of 1949, referred to in the text, is classified to chapter 21 of Title 5, Executive Departments and Government Officers and Employees.

§ 57. Leaves of absence; piece-rate employees

This section was formerly section 58 of this title.

"June 10, 1921, c. 18, §§ 304, 310, 42 Stat. 24, 25" should be stricken from the citation.

§ 58. Transferred

This section is now section 57 of this title.

§ 59. Studies by Comptroller General of restrictions in general appropriation Acts; reports to Congress

The Comptroller General is authorized and directed to make a full and complete study of restrictions placed in general appropriation Acts limiting the expenditure of specified appropriations therein, with a view to determining the cost to the Government incident to complying with such restrictions, and to report to the Congress his estimate of the cost of complying with such restrictions and such other recommendations with respect thereto as he deems necessary or desirable. Aug. 2, 1946, c. 753, Title II, § 205, 60 Stat. 837.

Effective date, see note set out under section 72a of Title 2, The Congress.

§ 60. Analyses of executive agencies' expenditures by Comptroller General; reports to Congressional committees

The Comptroller General is authorized and directed to make an expenditure analysis of each agency in the executive branch of the Government (including Government corporations), which, in the opinion of the Comptroller General, will enable Congress to determine whether public funds have been economically and efficiently administered and expended. Reports on such analyses shall be submitted by the Comptroller General, from time to time, to the Committees on Expenditures in the Executive Departments, to the Appropriations Committees, and to the legislative committees having jurisdiction over legislation relating to the operations of the respective agencies, of the two Houses. Aug. 2, 1946, c. 753, Title II, § 206, 60 Stat. 837.

Effective date, see note set out under section 72a of Title 2, The Congress.

CHAPTER 1A.—ACCOUNTING AND AUDITING [NEW]

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.
65. Congressional declaration of policy.
65a. Definition of "executive agency".
65b. Designation of places for administrative examination of officers' accounts; waiver of examination.

SUBCHAPTER II.—ACCOUNTING REPORTING IN EXECUTIVE AGENCIES

66. Standards and systems.
(a) Determination by Comptroller General; scope of requirements; continuation of authority.
(b) Cooperation by General Accounting Office in development of systems; approval by Comptroller.
(c) Review of systems by General Accounting Office; availability of results; reports to Congress.
66a. Establishment and maintenance of systems.
(a) Duties of agency heads; information and controls to be covered.
(b) Conformation with standards and requirements prescribed by Comptroller.
66b. Financial reports.
(a) Preparation by Secretary of

Sec.
Treasury; inclusion of required data; information to to be furnished by agencies.
(b) Establishment of unified system of accounting and reporting in Treasury Department; exercise of authority under other laws.
(c) Conformation of central system with standards and requirements prescribed by Comptroller.
66c. Receipt, retention, and disbursement of public funds.
(a) Waiver, by regulations, of requirements of existing law.
(b) Regulations for payment of vouchers by disbursing officers; provision for action in event of delinquency.
Sec.
66d. Discontinuance of certain accounts in General Accounting Office.

SUBCHAPTER III.—AUDIT OF FINANCIAL TRANSACTIONS OF EXECUTIVE, LEGISLATIVE, AND JUDICIAL AGENTS

67. Duty of General Accounting Office.
(a) Rules and regulations of Comptroller General; principles and practices to be considered.
(b) Retention by agencies of accounts of accountable officers, contracts, vouchers or other documents.

Cross References. Audit and settlement of accounts, see section 71 et seq. of this title.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 65. Congressional declaration of policy

It is the policy of the Congress in enacting this chapter that—

(a) The accounting of the Government provide full disclosure of the results of financial operations, adequate financial information needed in the management of operations and the formulation and execution of the Budget, and effective control over income, expenditures, funds, property, and other assets.

(b) Full consideration be given to the needs and responsibilities of both the legislative and executive branches in the establishment of accounting and reporting systems and requirements.

(c) The maintenance of accounting systems and the producing of financial reports with respect to the operations of executive agencies, including central facilities for bringing together and disclosing information on the results of the financial operations of the Government as a whole, be the responsibility of the executive branch.

(d) The auditing for the Government, conducted by the Comptroller General of the United States as an agent of the Congress be directed at determining the extent to which accounting and related financial reporting fulfill the purposes specified, financial transactions have been consummated in accordance with laws, regulations or other legal requirements, and adequate internal financial control over operations is exercised, and afford an effective basis for the settlement of accounts of accountable officers.

(e) Emphasis be placed on effecting orderly improvements resulting in simplified and more effective accounting, financial reporting, budgeting, and auditing requirements and procedures and on the elimination of those which involve duplication or which do not serve a purpose commensurate with the costs involved.

(f) The Comptroller General of the United States, the Secretary of the Treasury, and the Director of the Bureau of the Budget conduct a continuous program for the improvement of accounting and financial reporting in the Government. Sept. 12, 1950, c. 946, Title I, pt. II, § 111, 64 Stat. 834.

Short title. Congress, in enacting this chapter, provided by section 110 of Act Sept. 12, 1950, cited to text, that it should be popularly known as the "Accounting and Auditing Act of 1950".

Legislative History: For legislative history and purpose of Act Sept. 12, 1950, see 1950 U.S.Code Cong.Service, p. 3707.

§ 65a. Definition of "executive agency"

As used in this chapter, the term "executive agency" means any executive department or independent establishment in the executive branch of the Government but (a) except for the purposes of sections 65b, 66b, and 66d of this title shall not include any Government corporation or

agency subject to the Government Corporation Control Act, and (b) except for the purposes of sections 65, 66b, and 66d of this title shall not include the Post Office Department. Sept. 12, 1950, c. 946, Title I, pt. II, § 118, 64 Stat. 837.

References in text. The Government Corporation Control Act, referred to in text, is classified to section 841 et seq., of this title.

§ 65b. Designation of places for administrative examination of officers' accounts; waiver of examination

The head of each executive agency is authorized to designate the place or places, at the seat of government or elsewhere, at which the administrative examination of fiscal officers' accounts will be performed, and with the concurrence of the Comptroller General to waive the administrative examination in whole or in part: *Provided*, That the same authority is conferred upon the officers responsible for the administrative examination of accounts for legislative and judicial agencies. Sept. 12, 1950, c. 946, Title I, pt. II, § 119, 64 Stat. 838.

SUBCHAPTER II.—ACCOUNTING AND REPORTING IN EXECUTIVE AGENCIES

§ 66. Standards and systems—Determination by Comptroller General; scope of requirements; continuation of authority

(a) The Comptroller General of the United States, after consulting the Secretary of the Treasury and the Director of the Bureau of the Budget concerning their accounting, financial reporting, and budgetary needs, and considering the needs of the other executive agencies, shall prescribe the principles, standards, and related requirements for accounting to be observed by each executive agency, including requirements for suitable integration between the accounting processes of each executive agency and the accounting of the Treasury Department. Requirements prescribed by the Comptroller General shall be designed to permit the executive agencies to carry out their responsibilities under section 66a of this title, while providing a basis for integrated accounting for the Government, full disclosure of the results of the financial operations of each executive agency and the Government as a whole, and financial information and control necessary to enable the Congress and the President to discharge their respective responsibilities. The Comptroller General shall continue to exercise the authority vested in him by section 235 of Title 41 and, to the extent he deems necessary, the authority vested in him by section 49 of this title. Any such exercise of authority shall be consistent with the provisions of this section.

Cooperation by General Accounting Office in development of systems; approval by Comptroller

(b) The General Accounting Office shall cooperate with the executive agencies in the development of their accounting systems, including the Treasury Department, in the development and establishment of the system of central accounting and reporting required by section 66b of this title. Such accounting systems shall be approved by the Comptroller General when deemed by him to be adequate and in conformity with the principles, standards, and related requirements prescribed by him.

Review of systems by General Accounting Office; availability of results; reports to Congress

(c) The General Accounting Office shall from time to time review the accounting systems of the executive agencies. The results of such reviews shall be available to the heads of the executive agencies concerned, to the Secretary of the Treasury, and to the Director of the Bureau of the Budget, and the Comptroller General shall make such reports thereon to

the Congress as he deems proper. Sept. 12, 1950, c. 946, Title I, pt. II, § 112, 64 Stat. 835.

Cross References. Accounting for property of executive agencies, Comptroller General to prescribe principles and standards, see section 235(b) of Title 41, Public Contracts.

Administrative appropriation and fund accounting, Comptroller General to prescribe the forms, systems, and procedures, see section 49 of this title.

§ 66a. Establishment and maintenance of systems—Duties of agency heads; information and controls to be covered

(a) The head of each executive agency shall establish and maintain systems of accounting and internal control designed to provide—

(1) full disclosure of the financial results of the agency's activities;

(2) adequate financial information needed for the agency's management purposes;

(3) effective control over and accountability for all funds, property, and other assets for which the agency is responsible, including appropriate internal audit;

(4) reliable accounting results to serve as the basis for preparation and support of the agency's budget requests, for controlling the execution of its budget, and for providing financial information required by the Bureau of the Budget under section 21 of this title;

(5) suitable integration of the accounting of the agency with the accounting of the Treasury Department in connection with the central accounting and reporting responsibilities imposed on the Secretary of the Treasury by section 66b of this title.

Conformation with standards and requirements prescribed by Comptroller

(b) The accounting systems of executive agencies shall conform to the principles, standards, and related requirements prescribed by the Comptroller General pursuant to section 66(a) of this title. Sept. 12, 1950, c. 946, Title I, pt. II, § 113, 64 Stat. 836.

§ 66b. Financial reports—Preparation by Secretary of Treasury; inclusion of required data; information to be furnished by agencies

(a) The Secretary of the Treasury shall prepare such reports for the information of the President, the Congress, and the public as will present the results of the financial operations of the Government: *Provided,* That there shall be included such financial data as the Director of the Bureau of the Budget may require in connection with the preparation of the Budget or for other purposes of the Bureau. Each executive agency shall furnish the Secretary of the Treasury such reports and information relating to its financial condition and operations as the Secretary, by rules and regulations, may require for the effective performance of his responsibilities under this section.

Establishment of unified system of accounting and reporting in Treasury Department; exercise of authority under other laws

(b) The Secretary of the Treasury is authorized to establish the facilities necessary to produce the financial reports required by subsection (a) of this section. The Secretary is further authorized to reorganize the accounting functions and install, revise, or eliminate accounting procedures and financial reports of the Treasury Department in order to develop effective and coordinated systems of accounting and financial reporting in the several bureaus and offices of the Department with such concentration of accounting and reporting as is necessary to accomplish integration of accounting results for the activities of the Department and provide the operating center for the consolidation of accounting results of other executive agencies with those of the Department. The authority vested in and the duties imposed upon the Department by sections 255 and 264 of Title 5, section 42 of Title 19, sections 75 and 162 of this title, and section 21 of Title 41, may be exercised and performed by the

Secretary of the Treasury as a part of his broader authority and duties under this section and in such a manner as to provide a unified system of central accounting and reporting on the most efficient and useful basis.

Conformation of central system with standards and requirements prescribed by Comptroller

(c) The system of central accounting and reporting provided for herein shall be consistent with the principles, standards, and related requirements prescribed by the Comptroller General pursuant to section 66 of this title. Sept. 12, 1950, c. 946, Title I, pt. II, § 114, 64 Stat. 836.

§ 66c. Receipt, retention, and disbursement of public funds—Waiver, by regulations, of requirements of existing law

(a) When the Secretary of the Treasury and the Comptroller General determine that existing procedures can be modified in the interest of simplification, improvement, or economy, with sufficient safeguards over the control and accounting for the public funds, they may issue joint regulations providing for the waiving, in whole or in part, of the requirements of existing law that—

(1) warrants be issued and countersigned in connection with the receipt, retention, and disbursement of public moneys and trust funds; and

(2) funds be requisitioned, and advanced to accountable officers under each separate appropriation head or otherwise.

Regulations for payment of vouchers by disbursing officers; provision for action in event of delinquency

(b) Such regulations may further provide for the payment of vouchers by authorized disbursing officers by means of checks issued against the general account of the Treasurer of the United States: *Provided*, That in such case the regulations shall provide for appropriate action in the event of delinquency by disbursing officers in the rendition of their accounts or for other reasons arising out of the condition of the officers' accounts, including under necessary circumstances, the suspension or withdrawal of authority to disburse. Sept. 12, 1950, c. 946, Title I, pt. II, § 115, 64 Stat. 837.

Cross References. Advances of public moneys, prohibition against, see section 529 of this title.

Rendition of current accounts, see section 78 of this title.

Requisitions for advances, see section 76 of this title.

Treasurer of United States, receipts and disbursements of moneys of the United States, see section 147 of this title.

§ 66d. Discontinuance of certain accounts in General Accounting Office

The Comptroller General is authorized to discontinue the maintenance in the General Accounting Office of appropriation, expenditure, limitation, receipt, and personal ledger accounts when in his opinion the accounting systems and internal control of the executive, legislative, and judicial agencies are sufficient to enable him to perform properly the functions to which such accounts relate. Sept. 12, 1950, c. 946, Title I, pt. II, § 116, 64 Stat. 837.

SUBCHAPTER III.—AUDIT OF FINANCIAL TRANSACTIONS OF EXECUTIVE, LEGISLATIVE, AND JUDICIAL AGENCIES

§ 67. Duty of General Accounting Office—Rules and regulations of Comptroller General; principles and practices to be considered

(a) Except as otherwise specifically provided by law, the financial transactions of each executive, legislative, and judicial agency, including but not limited to the accounts of accountable officers, shall be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States. In the determination of auditing procedures to be followed and the extent of examination of vouchers

and other documents, the Comptroller General shall give due regard to generally accepted principles of auditing, including consideration of the effectiveness of accounting organizations and systems, internal audit and control, and related administrative practices of the respective agencies.

Retention by agencies of accounts of accountable officers, contracts, vouchers or other documents

(b) Whenever the Comptroller General determines that the audit shall be conducted at the place or places where the accounts and other records of an executive agency are normally kept, he may require any executive agency to retain in whole or in part accounts of accountable officers, contracts, vouchers, and other documents, which are required under existing law to be submitted to the General Accounting Office, under such conditions and for such period not exceeding ten years as he may specify, unless a longer period is agreed upon with the executive agency: *Provided*, That under agreements between the Comptroller General and legislative and judicial agencies the provisions of this sentence may be extended to the accounts and records of such agencies. Sept. 12, 1950, c. 946, Title I, pt. II, § 117, 64 Stat. 837.

Cross References. Accounts of United States officers and agents, see section 496 of this title.

CHAPTER 2.—AUDIT AND SETTLEMENT OF ACCOUNTS

Sec.
71a. Same; limitation of time on claims and demands [New].
80a. Same; extension of time during war or emergency [New].
80b. Administrative examination of accounts of United States Marine Corps expenditures [New].
80c. Administrative examination of accounts of Navy expenditures; extension of time during war or emergency [New].
82a. Lists of persons receiving periodic payments; vouchers [New].
82a-1. Relief of accountable officers of liability for loss [New].
82b. Disbursing officers of executive branch of the Government; examination of vouchers [New].
82c. Certifying officers; bond; accountability; relief by Comptroller General [New].
82d. Same; enforcement of liability [New].
82e. Disbursing officers excepted from sections 82b–82e of this title [New].
82f. Certifying and disbursing officers' accountability for correctness of computations of certified vouchers [New].
82g. Disbursing or certifying officer; exemption from liability for overpayments for transportation [New].
82h. Disbursing and certifying officers; exemption from liability for advances to defense relocation corporations [New].
82i. Limitation on time for final settlement of monthly or quarterly accounts of fiscal officers by General Accounting Office; suspension during war [New].
82j. Certifying officers of terminated war agencies in liquidation by Treasury Department; exemption from liability [New].
82k. Certifying officers of terminated war agencies in liquidation by Commerce Department; exemption from liability [New].
82l. Certifying officers of terminated war agencies in liquidation by Interior Department; exemption from liability [New].
Sec.
82m. Same; definition [New].
82n. Certifying officers of terminated war agencies in liquidation by Labor Department; exemption from liability [New].
95a. Relief of disbursing officers of Army [New].
103a. Disbursing officers of Army, Navy, and Marine Corps; designation of deputies [New].
103b. Death, incapacity or separation from office of disbursing officers of military departments; powers of deputies; bond [New].
107a. Same; delegation of authority by Secretary of State [New].
121. [New; Repealed].
122. Claims on paid checks and warrants; limitations [New].
123. Regulation of delivery in foreign countries of check against funds of United States; prohibition in absence of assurance that payee will receive and be able to negotiate check [New].
124. Same; withholding export-prohibited checks; release; procedure resulting in deposit in special account for withheld foreign checks [New].
125. Same; payments from special deposit account for withheld foreign checks [New].
126. Same; application of sections 124 and 125 to checks withheld pursuant to Executive Order or administrative action [New].
127. Same; rules and regulations [New].
128. Same; checks in payment of salaries or wages or for goods purchased by United States in foreign countries [New].
129. Limitation period on claims on forged or altered checks and warrants [New].
130. Allowance of credit in Treasurer's accounts for payment of forged or altered checks or warrants [New].
131. Limitation period affected by concealment of knowledge of forgery or alteration of checks and warrants [New].

Sec.
132. Payment of certain unpaid Government checks; transfer to special-deposit account; settlement by General Accounting Office; limitation on claims [New].
133. Transfer of balances from outstanding-liabilities account to special-deposit account; availability for payment [New].
134. Transfer from special-deposit account to receipt account; rules and regulations [New].

Additional wartime functions of disbursing officers, see sections 1705-1707 of Appendix to Title 50, War and National Defense.

Government agencies, accounting and auditing, see section 65 et seq. of this title.

§ 71. Public accounts to be settled in General Accounting Office

1. Necessity of settlement and adjustment of claims and accounts

Where estate of deceased member of partnership had not continued the partnership arrangement after decedent's death, surviving partner, who was not at the time executor or administrator for decedent's estate, was without authority to bind the estate in renegotiation agreements with government as to amount of excessive contract profits of partnership and amount of renegotiation settlement was not a proper offset to be made by the Comptroller General against estate's claim for overpayment of taxes by reason of abatement because of death of decedent while member of armed forces on active duty. Woodward v. U. S., Ct. Cl.1953, 109 F.Supp. 414.

In government's action to recover balance allegedly due on corn loans to defendant, defendant could not maintain counterclaim for recovery of soil conservation, production adjustment and parity payments under Soil Conservation and Domestic Allotment Act, 16 U.S.C.A. §§ 590a et seq., where defendant's claim for such payments had never been presented to accounting offices of federal treasury. U. S. v. Kelly, D.C.Iowa 1946, 69 F.Supp. 89.

2. Powers of accounting officers in general

The General Accounting Office would have no power to waive right to prosecute an informer suit or to settle it. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo.1946, 68 F.Supp. 902.

3. Matters subject to settlement in general

Statute transferring to General Accounting Office powers of Treasury Department in auditing and settling claims against government held not intended to disturb construction of words "final settlement" within statute governing subcontractors' suits on contractor's bond under government contract. Globe Indemnity Co. v. U. S. (Pa. 1934) 54 S. Ct. 499, 291 U. S. 476, 78 L.Ed. 924.

The General Accounting Office has authority under this section to settle claims for money due on contracts, though exact amount is not fixed, but not to settle claims founded on tort or breach of obligations contrary to terms of contract. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo.1946, 68 F.Supp. 902.

8. Matters specially referred by act of Congress

Where Act Aug. 27, 1935, 49 Stat. 2194 authorized payment to claimants of balance of loss resulting from negligence in operation of railroad then controlled by the United States and authorized attorneys' fee of 10 per cent. claimants executed assignments of 10 per cent. of their claims to the attorneys, assignments had been recognized as valid by General Accounting Office, many checks ranging in amount from $1.20 to $600 were issued, and many of claimants could not be found, attorneys were entitled to mandatory injunction to require payment of such checks without claimants' indorsement. Burdick v. Snyder, D.C.D.C.1946, 69 F.Supp. 280.

9. Effect of departmental decisions or action

The purpose of this section was to create an auditing authority wholly independent of the governmental departments. Accordingly an examination and approval by departmental heads of an account for construction work is not necessarily a final settlement, the decision of the Comptroller General constituting such a settlement. Lambert Lumber Co. v. Jones Engineering & Construction Co. (C. C. A. Mo.1931) 47 F.2d 74, certiorari denied 51 S.Ct. 489, 283 U.S. 842, 75 L.Ed. 1452, reviewing at length the legislative history antecedent to the enactment of this chapter.

9½. Compromise

An agreement between a trustee in bankruptcy of a war contractor and the government releasing the government from all claims, demands, etc., under war contracts and reciting that many of the amounts were unliquidated with respect to such contracts, compromised unliquidated claims due under the contracts and was not a settlement in the sense of a unilateral administrative determination of the amount due. Fogarty v. U. S., D.C. Minn.1948, 80 F.Supp. 90, affirmed 176 F. 2d 599, affirmed 71 S.Ct. 5, 340 U.S. 8, 95 L.Ed. 10.

11. Deductions and credits in general

Where credit by Comptroller General of export drawback refunds previously allowed by the Commissioner of Internal Revenue against outstanding processing taxes then due by exporter left no balance in favor of exporter, action to recover the export drawback refunds could not be maintained as on an account stated. John P. Squire Co. v. U. S., 1940, 30 F.Supp. 708, 90 Ct.Cl. 276, certiorari denied 60 S.Ct. 889, 309 U.S. 689, 84 L.Ed. 1031.

12. Set-off

To same effect as third paragraph of original annotation, see Seaboard Surety Co. v. U. S., Ct.Cl.1946, 67 F.Supp. 969.

The government has the same right which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him. U. S. v. Munsey Trust Co. of Washington, D. C., Ct.Cl.1947, 67 S.Ct. 1599, 332 U.S. 234, 91 L.Ed. 2022.

The General Accounting Office has authority to make settlement and adjustment of all accounts for and against the United States and may make a set-off of opposing claims before judgment. U. S. v. American Sur. Co. of N. Y., C.C.A.Fla. 1946, 158 F.2d 12.

In proceeding for recovery of amounts allegedly due plantation owners for 1937 and 1938 under section 590g et seq. of Title 16 and section 601 et seq. of Title 7, evidence was insufficient to establish that findings of Secretary of Agriculture, that no amount was due plantation owners for 1937 and that overpayments had been made for 1933 to 1936 which could be offset against amount due for 1938, were

arbitrary and capricious. Crain v. U. S., Ct.Cl.1949, 84 F.Supp. 876.

Injunction restraining Collector from collecting processing taxes from exporter did not preclude Comptroller General from setting off amount thereof against exporter's claim for export drawback refund under the Agricultural Adjustment Act. John P. Squire Co. v. U. S., 1940, 30 F.Supp. 708, 90 Ct.Cl. 276, certiorari denied 60 S.Ct. 889, 309 U.S. 689, 84 L. Ed. 1031.

13. Limitation of time of presentation

The Comptroller General's settlements of claims against United States for overtime pay for manual work as employees of Alaska Road Commission by allowing portions thereof for services rendered within ten years before submission of claims and tacit assent to such settlements by claimants in failing to object thereto constituted binding accords, which merged out claims and created new promises to pay, amounts allowed, so that actions on accounts thus stated were not barred by statute of limitations, though not filed within six years after last dates on which claimants performed services. Marr v. U. S., Ct.Cl. 1952, 106 F.Supp. 204.

15. Conclusiveness of settlement in general

The government, acting through Comptroller General, may reach accord with one presenting claim against government by settlement and adjustment thereof, thus merging out original claim and defenses which government might otherwise have had against it and setting statute of limitations running anew on new cause of action. Marr v. U. S., Ct.Cl.1952, 106 F.Supp. 204.

Where contract between contractor and United States provided that allowable cost shall constitute cost incurred by contractor in performance of contract and accepted by Bureau of Supplies and Accounts, and that all disputes concerning questions of fact as to allowable cost shall be decided by Chief of Bureau subject to written appeal by contractor to Secretary of Navy or his duly authorized representative whose decision shall be final and conclusive, and monthly invoices supported by statements of costs incurred by contractor were submitted to Bureau which accepted reimbursements made by United States to contractor under contract, determination of Bureau was final and conclusive, in absence of fraud, and United States could not recover any reimbursements. Leeds & Northrup Co. v. U. S., D.C.Pa.1951, 101 F.Supp. 999.

Where contract between contractor and United States provides that allowable cost shall constitute cost incurred by contractor in performance of contract and accepted by Bureau of Supplies and Accounts, and that all disputes concerning questions of fact as to allowable cost shall be decided by Chief of Bureau subject to written appeal by contractor to Secretary of Navy or his duly authorized representative whose decision shall be final and conclusive on parties, conscious wrongdoing or intention to cheat or be dishonest must be alleged and proved in order to entitle court to set aside Bureau's determinations. Id.

16½. Duty of Comptroller to scrutinize

It is duty of Comptroller General's office to question seemingly irregular or unlawful items paid out by disbursing officers. U. S. v. Heller (D. C. Md. 1932) 1 F. Supp. 1.

Where an Army kit bag, containing clothing and equipment purchased by the United States and furnished an enlisted man, United States Army, for use in the military service, is checked as baggage by the said soldier in connection with his travel on a Government transportation request, and is forwarded by an intermediate carrier via a route other than designated on the traveler's ticket, so that he does not receive it at destination, and it is sold for storage charges by the final carrier transporting it, the Government has a sufficient interest therein to enforce the carriers' liability, and may recover the value thereof, as limited by the terms of the ticket and the carriers' tariff, by deduction from an amount otherwise due the initial carrier. Atlantic Coast Line R. Co. v. U. S., 1926, 62 Ct. Cl. 449.

19. Statement of account not an award of arbitrators

The Comptroller General's statement in letter to one presenting claim against United States for overtime pay for manual work as employee of Alaska Road Commission that sum allowed him by such officer would be paid when money to be appropriated by Congress for payment thereof was available did not render Comptroller General's accord with claimant by agreed settlement for such sum conditional, as inability to pay money unless appropriation was available was consequence of law not of such statement. Marr v. U. S., Ct.Cl.1952, 106 F.Supp. 204.

22. Power of courts

Where fact that fines were erroneously assessed under Immigration Law (8 U. S. C. A. § 167a) has been found by Secretary of Labor signing of voucher for refund by Comptroller General is a ministerial duty which will be compelled by mandamus. McCarl v. U. S. ex rel. Societa Ligure Di Armanento (1929) 30 F.(2d) 561, 58 App. D. C. 319.

23. Contracts relating to Fleet Corporation

As respects claims on contracts of Fleet Corporation, this section must be construed in light of statutes specifically dealing with Shipping Board and Fleet Corporation, and of administrative practice. U. S. ex rel. Skinner & Eddy Corporation v. McCarl (Dist. Col. 1927) 48 S. Ct. 12, 275 U. S. 1, 72 L. Ed. 131.

§ 71a. Same; Limitation of time on claims and demands

(1) Every claim or demand (except a claim or demand by any State, Territory, possession or the District of Columbia) against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within ten full years after the date such claim first accrued: *Provided*, That when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established.

(2) Whenever any claim barred by subsection (1) shall be received in the General Accounting Office, it shall be returned to the claimant, with a copy of this section, and such action shall be a complete response without further communication. Oct. 9, 1940, c. 788, §§ 1, 2, 54 Stat. 1061.

Section is also set out as section 237 of this title.

Subsecs. (1) and (2) of this section are from sections 1 and 2, respectively, of Act Oct. 9, 1940, cited to text.

Termination of war and emergencies. Joint Res. July 25, 1947, c. 327, § 3, 61 Stat. 451, provided that in the interpretation of subsec. (1) of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on September 8, 1939, and May 27, 1941.

Cross References. Checks drawn on Treasurer of United States or designated depositaries, exception from limitations, see section 132 of this title.

1. New promises

The Comptroller General's settlements of claims against United States for overtime pay for manual work as employees of Alaska Road Commission by allowing portions thereof for services rendered within ten years before submission of claims and tacit assent to such settlements by claimants in failing to object thereto constituted binding accords, which merged out claims and created new promises to pay, amounts allowed, so that actions on accounts thus stated were not barred by statute of limitations, though not filed within six years after last dates on which claimants performed services. Marr v. U. S., Ct.Cl.1952, 106 F.Supp. 204.

2. Power of court

The Court of Claims can judicially notice that one claiming overtime pay for manual work as employee of Alaska Road Commission under statute which was misinterpreted by government administrative officer, resulting in denial of its benefits to many employees entitled thereto, was not culpably dilatory in failing to assert claim until after rendition of Supreme Court and Court of Claims decisions construing statute as entitling such employees to overtime pay, though claim was not submitted to Comptroller General within statutory period of ten years after accrual thereof. Marr v. U. S., Ct.Cl.1952, 106 F.Supp. 204.

§ 72. Same; settlement of accounts

Accounts shall be examined as follows:

First. The General Accounting Office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Treasury and all bureaus and offices under his direction, all accounts relating to the customs service, public debt, internal revenue, Treasurer and designated depositaries, mints and assay offices, Bureau of Engraving and Printing, Coast Guard, public buildings, Secret Service, and to all other business within the jurisdiction of the Department of the Treasury, and certify the balances arising thereon to the Secretary of the Treasury.

Second. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Army and all bureaus and offices under his direction, all accounts relating to the military establishment, armories and arsenals, national cemeteries, fortifications, public buildings and grounds formerly under the Chief of Engineers, rivers and harbors, the Military Academy, and to all other business within the jurisdiction of the Department of the Army, and certify the balances arising thereon to the Secretary of the Army.

Third. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Interior, and of all bureaus and offices under his direction, and all accounts relating to Army and Navy pensions, Geological Survey, public lands, Indians, Architect of the Capitol, and to all other business within the jurisdiction of the Department of the Interior, and certify the balances arising thereon to the Secretary of the Interior.

Fourth. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Navy, and of all bureaus and offices under his direction, all accounts relating to the Naval Establishment, Marine Corps, Naval Academy, and to all other business within the jurisdiction of the Department of the Navy, and certify the balances arising thereon to the Secretary of the Navy.

Fifth. The Bureau of Accounts in the Post Office Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Postmaster General and of all bureaus and offices under his direction, all postal and money-order accounts of postmasters, all accounts relating to the transportation of the mails, and to all other busi-

ness within the jurisdiction of the Post Office Department. The General Accounting Office shall audit the accounts and certify the balances arising thereon to the Postmaster General for accounts of the postal revenue and expenditures therefrom.

All expenditures in the Postal Savings System shall be audited by the General Accounting Office.

Sixth. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of Commerce, and of all bureaus and offices under his direction, all accounts relating to the National Bureau of Standards, Coast and Geodetic Survey, Patents, Census, and to all other business within the jurisdiction of the Department of Commerce, and certify the balances arising thereon to the Secretary of Commerce.

Seventh. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of Labor and of all bureaus and offices under his direction, and all accounts relating to all other business within the jurisdiction of the Department of Labor, and certify the balances arising thereon to the Secretary of Labor.

Eighth. Said office shall receive and examine all accounts of salaries and incidental expenses of the offices of the Secretary of State, the Attorney General, and the Secretary of Agriculture, and of all bureaus and offices under their direction; all accounts relating to all other business within the jurisdiction of the Departments of State, Justice, and Agriculture; all accounts relating to the Foreign Service, the judiciary, United States courts, judgments of United States courts, Executive Office, Civil Service Commission, Interstate Commerce Commission, District of Columbia, Court of Claims and its judgments, Smithsonian Institution, Territorial governments, the Senate, the House of Representatives, the Public Printer, Library of Congress, Botanic Garden, and accounts of all boards, commissions, and establishments of the Government not within the jurisdiction of any of the executive departments. Said office shall certify the balances arising thereon, according to the character of the account, to the Secretary of the Senate, Clerk of the House of Representatives, Sergeant at Arms of the House of Representatives, or the chief officer of the executive department, commission, board, or establishment concerned. July 31, 1894, c. 174, § 7, 28 Stat. 206; Feb. 14, 1903, c. 552, § 2, 32 Stat. 826; Aug. 24, 1912, c. 389, § 10, 37 Stat. 559; Mar. 4, 1913, c. 141, § 2, 37 Stat. 737; June 10, 1921, c. 18, § 304, 42 Stat. 24; May 24, 1924, c. 182, § 1, redesignated § 8 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1207; Feb. 26, 1925, c. 339, § 3, 43 Stat. 983; July 3, 1930, c. 863, § 1, 46 Stat. 1016; June 30, 1932, c. 314, §§ 501, 502, 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1939 Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1939 Reorg. Plan No. II, §§ 2(a), 4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1432, 1433; July 1, 1944, c. 373, Title VII, § 713, 58 Stat. 714, renumbered Aug. 13, 1946, c. 958, § 5, 60 Stat. 1049; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097: July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501, renumbered Feb. 28, 1948, c. 83, § 9(b), 62 Stat. 47, and amended Aug. 4, 1949, c. 393, §§ 1, 20, 63 Stat. 496, 561; 1949 Reorg. Plan No. 5, eff. Aug. 19, 1949, 14 F.R. 5227, 63 Stat. 1067.

1949 Amendment. Act Aug. 4, 1949, cited to text, amended section by reestablishing the Coast Guard and by repealing Acts June 17, 1910, c. 301, §§ 4, 13, 36 Stat. 537; Jan. 28, 1915, c. 20, § 1, 38 Stat. 800.

Effective date. Amendment of section by act Aug. 4, 1949, cited to text, effective as of the first day of the third month after the month of approval, August 1949, see note set out preceding chapter 1 of Title 14, Coast Guard.

Repeals. Act Aug. 14, 1912, c. 288, § 1, 37 Stat. 309, which changed name of Public Health and Marine Hospital Service of the United States to Public Health Service was repealed by Act July 1, 1944, c. 373, Title VII, § 714, 58 Stat. 714, renumbered by Acts July 1, 1946, Feb. 28, 1948, both cited to text. Said Act July 1, 1944, retained the name Public Health Service.

Transfer of Functions. The functions of all other officers of the Department of Commerce and the functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of

his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 591 of Title 5, Executive Departments and Government Officers and Employees.

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in note under section 481 of Title 5, Executive Departments and Government Officers and Employees.

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

All executive and administrative functions of the Civil Service Commission were transferred to the Chairman of the Civil Service Commission by 1949 Reorg. Plan No. 5, eff. Aug. 19, 1949, 14 F.R. 5227, 63 Stat. 1067. See note set out under section 632 of Title 5, Executive Departments and Government Officers and Employees.

Reference to the Bureau of Marine Inspection and Navigation in Paragraph Sixth of this section was omitted on authority of 1946 Reorg. Plan No. III, cited to text, which abolished that bureau. See note under section 1 of Title 46.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

Change of name of "Bureau of Navigation and Steamboat Inspection" to "Bureau of Marine Inspection and Navigation", see section 597a-1 of Title 5.

See section 4 of Title 40, and Executive Order 6166, § 2, set out in note under section 132 of Title 5. **The Office of National Parks, Buildings and Reservations was designated the "National Park Service" by Act Mar. 2, 1934, c. 38, § 1, 48 Stat. 380.**

Many of the bureaus, agencies, etc., mentioned in this section have been transferred or abolished by the President's Reorganization Plans promulgated under Reorganization Act of 1939, and set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Cross References. Transfer of powers and duties of Department of Justice or Attorney General respecting administrative audits of accounts and vouchers under section 446 of Title 28, see note thereunder.

Death, resignation or separation from office of Chief Disbursing Officer as affecting settlement, see section 249b of Title 5, Executive Departments and Government Officers and Employees.

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 13, 1946, cited to text, see 1946 U.S.Code Cong.Service, p. 1558. See, also, Act Feb. 28, 1948, 1948 U.S.Code Cong.Service, p. 1103.

11. Duty of General Accounting Office

Under sections 78, 80, 82, 84, 91, 97 of Title 2 governing duties of Sergeant at Arms of House of Representatives, it was duty of Sergeant at Arms to submit to General Accounting Office accounts current and it was duty of General Accounting Office to receive and examine the accounts and to certify balances arising thereon. Romney v. U. S., 1948, 167 F.2d 521, 83 U.S.App.D.C. 150, certiorari denied 68 S.Ct. 1512, 334 U.S 847, 92 L.Ed. 1771.

§ 73. Repealed. Aug. 17, 1950, c. 735, § 10(a) (2), 64 Stat. 462.

Effective date. Repeal as effective on the nineteenth day following Aug. 17, 1950, see note set out under section 794 of Title 39, The Postal Service.

Section now covered by sections 794–794f of Title 39, The Postal Service.

§ 74. Certified balances of public accounts; conclusiveness; suspension of items; preservation of adjusted accounts; decision upon questions involving payments. Balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller General of the United States, may, within a year, obtain a revision of the said account by the Comptroller General of the United States, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government. Nothing in this chapter shall prevent the General Accounting Office from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement.

The General Accounting Office shall preserve all accounts which have been finally adjusted, together with all vouchers, certificates, and related papers, until disposed of as provided by law.

Disbursing officers, or the head of any executive department, or other establishment not under any of the executive departments, may apply for and the Comptroller General shall render his decision upon any question

involving a payment to be made by them or under them, which decision, when rendered, shall govern the General Accounting Office in passing upon the account containing said disbursement. July 31, 1894, c. 174, § 8, 28 Stat. 207; June 10, 1921, c. 18, § 304, 42 Stat. 24; Oct. 25, 1951, c. 562, § 3(1), 65 Stat. 639.

1951 Amendment. Act Oct. 25, 1951, in second paragraph, inserted "and related papers" and "until disposed of as provided by law".

Cross References. Management and disposition of records, see chapters 10 and 11 of Title 44, Public Printing and Documents.

Legislative History: For legislative history and purpose of Act Oct. 25, 1951, see 1951 U.S.Code Cong.Service, p. 2434.

2. —— Questions to which statute applicable

Under this section, the Comptroller General was required to make inquiry and answer question presented by president of Civil Service Commission whether a retired foreign service officer is entitled to receive concurrently an annuity for disability and compensation for services rendered as a civilian employee. Brunswick v. Elliott, 1939, 103 F.2d 746, 70 App. D.C. 45.

3. —— Conclusiveness of decisions

Effect of Comptroller General's advance decision that statutes authorized no retirement pay for enlisted men in Philippine Scouts held matter purely of law, and mandamus compelling him to recall decision was unnecessary. Miguel v. McCarl (1934) 54 S. Ct. 465, 291 U. S. 442, 78 L. Ed. 901.

The Comptroller General's decision on question whether a retired foreign service officer is entitled to receive concurrently an annuity for disability and compensation for services rendered as a civilian employee was required to be based on an interpretation of statutes, and his statutory duty to render a decision was not "ministerial" but was "administrative" and "quasi judicial," requiring the exercise of discretion, and hence his action could not be controlled by mandamus or injunction. Brunswick v. Elliott, 1939, 103 F.2d 746, 70 App.D.C. 45.

The United States Court of Appeals for the District of Columbia could not, by granting an injunction, in effect require the Comptroller General to disaffirm a decision which he regarded it his duty to make in exercise of judgment reposed in him by law and require him to come to a determination directly opposite to that which he had reached within his jurisdiction. Id.

The opinion of Comptroller General that salary of government construction subcontractor's project manager was not a reimbursable item of cost of project was not decisive of dispute between subcontractor and prime contractor on such question. Evans Elec. Const. Co. v. Wm. S. Lozier, Inc., D.C.Mo.1946, 68 F.Supp. 256, appeal dismissed 162 F.2d 717.

4. Opinions by Attorney General

Question relating to the authority of the Navy Department to make payment of traveling expenses incurred by officers' dependents should under section 8 of Act of July 31, 1894, be submitted to the Comptroller General for an advanced opinion rather than to the Attorney General for a legal interpretation of the statute. (1922) 33 Op. Atty. Gen. 265.

7. Time to revise account

Where plaintiff's claim for losses sustained by him while employee of United States Treasury Department stationed in Germany was actually paid to plaintiff March 21, 1938, action of Comptroller General in determining that claim had been paid by mistake and in demanding its repayment more than one year thereafter was in direct contravention of this section limiting to one year his authority to revise such claim. Kruszewski v. U. S., C.C.A.Ill.1947, 163 F.2d 884, certiorari denied 68 S.Ct. 909, 333 U.S. 880, 92 L.Ed. 1155, petition denied 72 S.Ct. 104, 342 U. S. 864, 96 L.Ed. 649, rehearing denied 72 S.Ct. 289.

§ 75. Regulations for carrying out provisions

"Sections 72, 74, 76, 78, 84, 87, 496, 506, and 514 of this title" in lines 3 and 4 should read "section 87 of this title and so much of sections 74, 76, 78, 496, and 514 of this title as pertains to his duties".

§ 76. Requisitions for advances

Cross References. Receipt, retention, and disbursement of public funds, waiver of requirements of existing law, see section 66c of this title.

§ 78. Rendition of current accounts

Powers and duties of Comptroller of Treasury or the six auditors of the Treasury Department, and the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury, to be vested in General Accounting Office, see section 44 of this title.

Receipt, retention, and disbursement of public funds waiver of requirements of existing law, see section 66c of this title.

§ 79. Transmission of accounts of courts in Alaska to Department of Justice

Transfer of certain duties of Attorney General to Administrative Office of the United States Courts, see note under sections 604, 609 of Title 28, Judiciary and Judicial Procedure.

§ 80. Administrative examination of accounts of Army expenditures

"Secretary of the Treasury" in line 7 should read "Comptroller General."

"§ 309" should be added to last citation.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the

Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Termination of war and emergencies. Joint Res. July 25, 1947, c. 327, § 3, 61 Stat. 451, provided that in the interpretation of the provision of this section, as amended by section 80a of this title, extending the time for examination of accounts of Army disbursing officers, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 80a. Same; extension of time during war or emergency

The time for examination of monthly accounts covering expenditures by disbursing officers of the Army after the date of actual receipt by bureaus and offices of the Department of the Army and before transmitting the same to the General Accounting Office, as limited by section 267 of Title 5 and sections 44, 45, 78, 80, and 496 of this title, and notwithstanding the provisions of section 80 of this title, is extended, in time of war or during any emergency declared by Congress or determined by the President and for a period of eighteen months after such war or emergency shall have ceased to exist, from sixty to ninety days. Nov. 21, 1941, c. 499, 55 Stat. 781; amended July 26, 1947 c. 343, Title II, § 205(a), 61 Stat. 501.

References in text. Words "as limited by section 267 of Title 5 and sections 44, 45, 78, 80, and 496 of this title, and notwithstanding the provisions of section 80 of this title" originally read "as limited by section 12 of the Act of July 31, 1894 (28 Stat. 209), as amended by section 4 of the Act of March 2, 1895 (28 Stat. 807), by the Act of March 2, 1901 (31 Stat. 910), and by the Act of June 10, 1921 (42 Stat. 24), and notwithstanding the provisions of the Act of July 9, 1918 (40 Stat. 892)". For complete distribution of the various Acts referred to, see Tables.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

Termination of war and emergencies. Joint Res. July 25, 1947, c. 327, § 3, 61 Stat. 451, provided that in the interpretation of the provision of section 80 of this title, as amended by this section, extending the time for examination of accounts of Army disbursing officers, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 80b. Administrative examination of accounts of United States Marine Corps expenditures

The time for examination of monthly accounts covering expenditures by disbursing officers and special disbursing agents of the United States Navy, United States Marine Corps, and United States Coast Guard after the date of actual receipt at the administrative office or offices designated to make the examination, and before transmitting the same to the General Accounting Office as limited by sections 78 and 496 of this title and section 267 of Title 5, is hereby extended from twenty to sixty days. In time of war or national emergency and for a period of eighteen months after such war or emergency shall have ceased to exist, the time for examination of such monthly accounts is hereby extended from sixty to ninety days. Dec. 26, 1941, c. 629, 55 Stat. 862, as amended Dec. 23, 1944, c. 720, 58 Stat. 923.

Act Dec. 23, 1944, cited to text, amended section by inserting "is hereby extended from twenty to sixty days" and omitting "is hereby extended from sixty * * * shall have ceased to exist.", and added second sentence.

Termination of war and emergencies. Joint Res. July 25, 1947, c. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on September 8, 1939, and May 27, 1941.

§ 80c. Administrative examination of accounts of Navy expenditures; extension of time during war or emergency

The time for examination of quarterly accounts covering expenditures by disbursing officers of the United States Navy after the date of actual receipt in the Bureau of Supplies and Accounts, Navy Department, and before transmitting the same to the General Accounting Office, as limited by sections 78 and 496 of this title and section 267 of Title 5, is hereby extended from sixty to ninety days in time of war or during any emer-

gency declared by Congress and for a period of eighteen months after such war or emergency shall have ceased to exist. Feb. 20, 1942, c. 95, 56 Stat. 94.

Termination of war and emergencies. Joint Res. July 25, 1947, c. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on September 8, 1939, and May 27, 1941.

§ 81. Transmission of accounts of marshals

Functions relating to disbursement by United States marshals which would otherwise have become functions of Treasury Department on July 1, 1940, by virtue of Ex.Ord.No.6166, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, set out in note under section 133t of Title 5. See, also, sections 13–15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

§ 82. Administrative examination of accounts

"June 10, 1921, c. 18, § 304, 42 Stat. 24," should be added to citation.

Certifying officers, bond, liability for improper payment and relief by Comptroller General, see section 82c of this title.

Disbursements by officers of executive branch of Government, see section 82b of this title.

Enforcement of liability, see section 82d of this title.

Fiscal Service to furnish addressographed or stenciled lists of persons receiving periodic payments from United States, which lists may constitute vouchers on which Fiscal Service may make payment, notwithstanding this section, see section 82a of this title.

§ 82a. Lists of persons receiving periodic payments; vouchers

After May 14, 1937, the provisions of section 82 of this title, shall not preclude the furnishing by the Fiscal Service, Treasury Department, at the request of administrative officers, of addressographed or stenciled lists of persons receiving periodic payments from the United States, which lists, as administratively revised and certified, if otherwise in proper form, may constitute the voucher upon which the Fiscal Service may make payment. (May 14, 1937, c. 180, Title I, 50 Stat. 140; Reorg. Plan No. III, § 1(a), eff. June 30, 1940, 5 Fed.Reg. 2107, 54 Stat. 1231.)

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Division of Disbursement of Treasury Department was consolidated into Fiscal Service of Treasury Department by Reorg. Plan No. III, § 1(a) (1), eff. June 30, 1940, cited to text, set out as note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

§ 82a–1. Relief of accountable officers of liability for loss

The General Accounting Office is authorized, after consideration of the pertinent findings and if in concurrence with the determinations and recommendations of the head of the department or independent establishment concerned, to relieve any disbursing or other accountable officer or agent or former disbursing or other accountable officer or agent of any such department or independent establishment of the Government charged with responsibility on account of physical loss or deficiency of Government funds, vouchers, records, checks, securities, or papers in his charge, if the head of the department or independent establishment determines (1) that such loss or deficiency occurred while such officer or agent was acting in the discharge of his official duties, or that such loss or deficiency occurred by reason of the act or omission of a subordinate of such officer or agent; and (2) that such loss or deficiency occurred without fault or negligence on the part of such officer or agent. This section shall be applicable only to the actual physical loss or deficiency of Government funds,

vouchers, records, checks, securities, or papers, and shall not include deficiencies in the accounts of such officers or agents resulting from illegal or erroneous payments. Aug. 1, 1947, c. 441, § 1, 61 Stat. 720.

Effect On Other Laws. Section 2 of Act Aug. 1, 1947, cited to text, provided that this section should not operate to repeal the provisions of sections 95a and 105 of this title.

Cross References. Army disbursing officers, relief of, see section 95a of this title.

Certifying officers, relief by Comptroller General, see section 82c of this title.

Disbursing and certifying officers—
Exemption from liability for advances to defense relocation corporations, see section 82h of this title.
Exemption from liability for overpayments for transportation, see section 82g of this title.

Navy disbursing officers, relief of, see section 105 of this title.

Congressional Comment: For legislative history and purpose of Act Aug. 1, 1947, cited to text, see 1947 U.S.Code Cong.Service, p. 1546.

§ 82b. Disbursing officers of executive branch of the Government; examination of vouchers

Notwithstanding the provisions of section 82 of this title, and section 4 of Executive Order Numbered 6166, dated June 10, 1933, disbursing officers under the executive branch of the Government shall (1) disburse moneys only upon, and in strict accordance with, vouchers duly certified by the head of the department, establishment, or agency concerned, or by an officer or employee thereof duly authorized in writing by such head to certify such vouchers; (2) make such examination of vouchers as may be necessary to ascertain whether they are in proper form, duly certified and approved, and correctly computed on the basis of the facts certified; and (3) be held accountable accordingly. Dec. 29, 1941, c. 641, § 1, 55 Stat. 875.

Section 4 of Executive Order Numbered 6166, dated June 10, 1933, cited in text, is set out as note following section 132 of Title 5, Executive Departments and Government Officers and Employees.

Effective date. Section 5 of Act Dec. 29, 1941, cited to text, provided: "This Act [sections 82b–82e of this title] shall become effective on the first day of the fourth month following the date of its enactment."

Cross References. Relief of accountable officers, see section 82a-1 of this title.

§ 82c. Certifying officers; bond; accountability; relief by Comptroller General

The officer or employee certifying a voucher shall (1) be held responsible for the existence and correctness of the facts recited in the certificate or otherwise stated on the voucher or its supporting papers and for the legality of the proposed payment under the appropriation or fund involved; (2) be required to give bond to the United States, with good and sufficient surety approved by the Secretary of the Treasury, in such amount as may be determined by the head of the department, agency, or establishment concerned, pursuant to standards prescribed by the Secretary of the Treasury, and under such conditions as may be prescribed by the Secretary of the Treasury; and (3) be held accountable for and required to make good to the United States the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved: *Provided*, That the Comptroller General may, in his discretion, relieve such certifying officer or employee of liability for any payment otherwise proper whenever he finds (1) that the certification was based on official records and that such certifying officer or employee did not know, and by reasonable diligence and inquiry could not have ascertained, the actual facts, or (2) that the obligation was incurred in good faith, that the payment was not contrary to any statutory provision specifically prohibiting payments of the character involved, and that the United States has received value for such payment: *Provided further*, That the Comptroller General shall relieve such certifying officer or employee of liability for an overpayment for transportation services made to any common carrier covered by section 67 of Title 49, whenever he finds that the overpayment occurred solely because the administrative examination made prior

to payment of the transportation bill did not include a verification of transportation rates, freight classifications, or land-grant deductions. Dec. 29, 1941, c. 641, § 2, 55 Stat. 875.

Effective date, see note under section 82b of this title.

Relief of accountable officers, see section 82a-1 of this title.

1. Department head, bonding of

When the head of a department or agency certifies vouchers he is required by this section, to be bonded. 1943, Op. Atty.Gen. 284.

§ 82d. Same; enforcement of liability

The liability of certifying officers or employees shall be enforced in the same manner and to the same extent as now provided by law with respect to enforcement of the liability of disbursing and other accountable officers; and they shall have the right to apply for and obtain a decision by the Comptroller General on any question of law involved in a payment on any vouchers presented to them for certification. Dec. 29, 1941, c. 641, § 3, 55 Stat. 876.

Effective date, see note under section 82b of this title.

Enforcement of liability of disbursing and other accountable officers, see sections 506, 508, 510, 511 of this title.

§ 82e. Disbursing officers excepted from sections 82b–82e of this title

Nothing contained in sections 82b–82e of this title shall apply to the disbursing functions under the jurisdiction of the Department of the Army, the Navy Department (including the Marine Corps), and the Canal Zone Government, except those pertaining to departmental salaries and expenses in the District of Columbia. Dec. 29, 1941, c. 641, § 4, 55 Stat. 876, amended July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501; Sept. 26, 1950, c. 1049, § 2(a) (1), 64 Stat. 1038.

Change of Name. The independent agency formerly known as the Panama Canal was redesignated Canal Zone Government by Act Sept. 26, 1950, cited to text and set out as section 1305-1 of Title 48, Territories and Insular Possessions. For effective date of this change, see note under said section 1305-1.

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

Cross References. Effective date, see note under section 82b of this title.

Legislative History: For legislative history and purpose of Act Sept. 26, 1950, see 1950 U.S.Code Cong.Service, p. 3926.

§ 82f. Certifying and disbursing officers' accountability for correctness of computations of certified vouchers

The responsibility and accountability of certifying officers under sections 82b–82e of this title shall be deemed to include the correctness of the computations of certified vouchers and disbursing officers shall not be held accountable under section 82b of this title for the correctness of such computations. Apr. 28, 1942, c. 247, Title III, 56 Stat. 244.

§ 82g. Disbursing or certifying officers; exemption from liability for overpayments for transportation

No disbursing or certifying officer of the United States shall be held liable for overpayments made for transportation furnished on Government bills of lading or transportation requests when said overpayments are due to the use of improper transportation rates, classifications, or the failure to deduct the proper amount under land-grant laws or equalization and other agreements. June 1, 1942, c. 320, 56 Stat. 306.

§ 82h. Disbursing and certifying officers; exemption from liability for advances to defense relocation corporations

The Comptroller General of the United States is authorized and directed to allow credit in the accounts of disbursing and certifying officers for advances made in good faith on behalf of the Department of Agriculture to defense relocation corporations and land purchasing associations. Aug. 14, 1946, c. 964, § 6, 60 Stat. 1079.

§ 82i. Limitation on time for final settlement of monthly or quarterly accounts of fiscal officers by General Accounting Office; suspension during war

Effective three years after May 19, 1947, the monthly or quarterly accounts of any disbursing, accountable, or certifying officer of the Government shall be settled by the General Accounting Office within a period of not to exceed three years from the date of the receipt of the account by the General Accounting Office. A copy of the certificate of settlement in each case shall be sent to the officer involved and such settlement shall be final and conclusive on the General Accounting Office after the expiration of three years from the date of receipt of the account to the extent that no further charges or debts shall be raised in such account thereafter except as to moneys which have been or may be lost to the United States due to fraud or criminality on the part of said officer: *Provided*, That nothing in this section shall be construed to prohibit recovery from any payee of public moneys illegally or erroneously paid to such payee or to preclude the recovery from the disbursing, accountable, or certifying officer or his surety of any balance found due the Government under a settlement made within the period of three years as provided in this section: *Provided further*, That nothing in this section shall be construed to deprive any such officer of his right at any time to clear his accounts of questioned items in accordance with the provisions of existing law: *Provided further*, That the period of limitation above prescribed shall be regarded as suspended for the duration of any future war in which the United States may be engaged. May 19, 1947, c. 78, 61 Stat. 101.

Congressional Comment: For legislative history and purpose of Act May 19, 1947, cited to text, see 1947 U.S.Code Cong.Service, p. 1078.

§ 82j. Certifying officers of terminated war agencies in liquidation by Treasury Department; exemption from liability

The Comptroller General of the United States is authorized and directed to allow credit in the accounts of authorized certifying officers of terminated war agencies, in process of liquidation by the Treasury Department February 9, 1950, for the amounts of suspensions and disallowances, which have been, or may be, raised by the General Accounting Office on account of payments made in accordance with vouchers certified by such certifying officers: *Provided*, That the Secretary of the Treasury or his authorized representative shall certify that in his opinion there is no evidence of fraud or collusion on the part of the certifying officers in connection with the payments. Feb. 9, 1950, c. 6, 64 Stat. 5.

Legislative History: For legislative history and purpose of Act Feb. 9, 1950, cited to text, see 1950 U.S.Code Cong. Service, p. 1911.

§ 82k. Certifying officers of terminated war agencies in liquidation by Commerce Department; exemption from liability

The Comptroller General of the United States is authorized and directed to allow credit, in the accounts of authorized certifying officers of terminated war agencies in process of liquidation by the Department of Commerce on June 14, 1950, for the amounts of suspension and disallowances, which have been, or may be, raised by the General Accounting Office on account of payments made in accordance with vouchers certified by such certifying officers: *Provided*, That the Secretary of Commerce or his authorized representative shall certify that in his opinion there is no evidence of fraud or collusion on the part of the certifying officers in connection with the payments: *Provided further*, That nothing under this section shall operate to relieve from liability to the United States, any payee who has received any payment of Government funds to which he is not entitled. June 14, 1950, c. 233, 64 Stat. 212.

§ 82*l*. Certifying officers of terminated war agencies in liquidation by Interior Department; exemption from liability

The Comptroller General of the United States is authorized and directed to allow credit in the accounts of authorized certifying officers of terminated war agencies, in process of liquidation by the Department of the Interior on June 14, 1950, for the amounts of suspensions and disallowances, which have been, or may be, raised by the General Accounting Office on account of payments made in accordance with vouchers certified by such certifying officers: *Provided*, That the Secretary of the Interior or his authorized representative shall certify that in his opinion there is no evidence of fraud or collusion on the part of the certifying officers in connection with the payments. June 14, 1950, c. 234, § 1, 64 Stat. 212.

§ 82m. Same; definition

The expression "terminated war agencies", as used in this section 82*l* of this title, means the Solid Fuels Administration for War, the Petroleum Administration for War, the War Relocation Authority, the Coal Mines Administration, the Office of the United States High Commissioner to the Philippine Islands, and that part of the functions of the Division of Territories and Island Possessions authorized under the head of "Emergency fund, Territories and island possessions (national defense)" by the joint resolution of December 23, 1941 (55 Stat. 855, 856). June 14, 1950, c. 234, § 2, 64 Stat. 212.

References in Text. The joint resolution of December 23, 1941 (55 Stat. 855, 856) referred to in the text refers to Joint Res. Dec. 23, 1941, c. 621, 55 Stat. 855, which was not classified to the Code.

§ 82n. Certifying officers of terminated war agencies in liquidation by Labor Department; exemption from liability

The Comptroller General of the United States is authorized and directed to allow credit in the accounts of authorized certifying officers of terminated war agencies, in process of liquidation by the Department of Labor on April 24, 1951, for the amounts of suspensions and disallowances, which have been, or may be, raised by the General Accounting Office on account of payments made in accordance with vouchers certified by such certifying officers: *Provided*, That the Secretary of Labor or his authorized representative shall certify that the Department of Labor has no evidence of fraud or collusion on the part of the certifying officers in connection with the payments. Apr. 24, 1951, c. 35, 65 Stat. 32.

§ 83. Administrative audit of accounts under Department of Justice

Transfer of powers and duties of Department of Justice or Attorney General respecting administrative audits of accounts and vouchers under section 446 of Title 28, see note thereunder.

§ 84. Rendition of accounts of officers of courts

Before transmission to the General Accounting Office, the accounts of United States attorneys, assistant attorneys, and marshals, made out and approved as required by law, and accounts relating to prisoners convicted or held for trial in any court of the United States, and all other accounts relating to the Department of Justice, shall be sent with their vouchers to the Attorney General and examined under his supervision. Before transmission to the General Accounting Office, the accounts of United States Commissioners, clerks of court and other officers of the courts of the United States, except the Supreme Court of the United States and consular courts, made out and approved as required by law, shall be sent with their vouchers to the Director of the Administrative Office of the United States Courts and examined under his supervision. As amended June 25, 1948, c. 646, § 7, 62 Stat. 986.

1948 Amendment. Act June 25, 1948, cited to text, amended section by substituting "General Accounting Office" for "Department of Treasury" and by omitting provisions relating to certain powers and duties which are now vested in the Director of the Administrative Office of the United States Courts.

Effective date. Section 38 of Act June 25, 1948, cited to text, provided that the

amendment of this section should be effective as of Sept. 1, 1948.

Transfer of Functions. Powers and duties conferred or imposed by law upon Department of Justice or Attorney General, relating to administrative audit of accounts referred to in section 446 of Title 28, transferred to Administrative Office of the United States Courts, see Act Aug. 7, 1939, c. 501, § 5, set out as note under section 446 of Title 28, Judicial Code and Judiciary.

§ 87. Papers transmitted with accounts of customs officers

Forms, systems, and procedure for administrative appropriation and fund accounting, and administrative examination of fiscal officer's accounts and claims against United States, to be prescribed by Comptroller General, see section 49 of this title.

§ 88. Reexamination of disallowed claims

Nothing in sections 48, 50, 72, 75, 76, 78, 84, 86–88, 93, 95, 97, 103, 104, 109, 111–113, 115, 116, 147, 150, 162, 163, 496, 506, 514 of this title, sections 62, 255, 264, 267, 321, 379, 380 of Title 5, sections 31, 32, 42 of Title 19, section 94 of Title 22, sections 96, 97 of Title 25, section 1731 of Title 28, section 34 of Title 39, sections 20, 21 of Title 41, sections 15, 112 of Title 42, sections 14, 32 of Title 43, section 223 of Title 44 and sections 679, 681 of Title 46 shall be construed to authorize the reexamination and payment of any claim or account which had been disallowed or settled prior to July 31, 1894. July 31, 1894, c. 174, § 23, 28 Stat. 211.

§ 90. Same; certificate as to lost property

"Said certificate" at beginning of section should read "The certificate required by section 89 of this title".

§ 92. Same; regulations

"92" in last line should be "91."

§ 93. General Accounting Office superintending recovery of debts

Functions of prosecuting in the courts claims and demands by the Government of the United States transferred to Department of Justice, see Ex.Or.No.6166, § 5, set out as note following section 132 of Title 5, Executive Departments, Government Officers and Employees.

§ 95. Settlement of accounts of Army officers

"July 31, 1894, c. 174, § 3, 28 Stat. 205" should be added to citation.

§ 95a. Relief of disbursing officers of Army

The General Accounting Office shall relieve any disbursing officer of the Army charged with responsibility on account of loss or deficiency while in the line of duty, of Government funds, vouchers, records, or papers, in his charge, where such loss or deficiency occurred without fault or negligence on the part of said officer: *Provided*, That the Secretary of the Army shall have determined that the officer was in the line of his duty, and the loss or deficiency occurred without fault or negligence on his part: *Provided further*, That the determination by the Secretary of the Army of the aforesaid questions shall be conclusive upon the General Accounting Office: *And provided further*, That this section shall be applicable only to the actual physical loss of Government funds, vouchers, records, or papers, and shall not include deficiencies in the accounts of disbursing officers of the Army resulting from illegal or erroneous payments. Dec. 13, 1944, c. 552, 58 Stat. 800, amended July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

Effect Of Other Laws. Section not affected by section 82a-1 of this title, see note under said section 82a-1.

Validation of payments made prior to July 1, 1942 for support of National Guard. Act June 19, 1948, c. 510, 62 Stat. 488, provided: "That payments made prior to July 1, 1942, out of moneys appropriated under the provisions of the National Defense Act, for the support of the National Guard of the several States, Territories, and the District of Columbia which now stand disallowed or would hereafter be disallowed, but for this Act, by reason of lack of adequate or correct supporting vouchers and documents, are hereby ratified and validated as to the United States property and disbursing officers making the same, in such amounts only as are found and de-

termined by the Comptroller General of the United States to be without substantial evidence of fraud or criminality or of timely knowledge of such fraud or criminality on the part of the United States property and disbursing officer involved and to have been actually expended in good faith or under bona fide contract (1) for services which in fact have been rendered or (2) for facilities which in fact have been furnished to the United States and its agencies including the National Guard; all items so found shall be passed to credit in the accounts of the property and disbursing officers involved, and any settlement based thereon shall not be reopened as against any such officer in the absence of new evidence of fraud or criminality: Provided, That nothing herein shall be construed to prohibit recovery from any payee of public moneys illegally or erroneously paid to such payee or to preclude the recovery from any such property and disbursing officer or his surety of any balance found due the Government under a settlement made as herein provided."

Temporary relief and credits to disbursing officers of War and Navy Departments. Act July 26, 1947, c. 338, 61 Stat. 493, provided: "That the Comptroller General of the United States be, and he hereby is, authorized, through such officer as he may designate, and within two years from the passage of this Act, (a) to relieve disbursing and certifying officers, including special disbursing agents of the War and Navy Departments, from accountability or responsibility for losses, occurring between September 8, 1939, to July 1, 1946, of funds, or of accounts, papers, records, vouchers, or data pertaining to said funds, for which said officers or agents were accountable or responsible; and (b) to allow credits, in the settlement of accounts of said officers or agents, for payments made in good faith on public account during said period, notwithstanding failure to comply with the requirements of existing law or regulations pursuant thereto: *Provided*, That in cases of losses or payments involving more than $2,500 the Comptroller General shall exercise the authority herein only upon the written recommendation of the Secretary of War or the Secretary of the Navy, which recommendation shall be concurred in by the Attorney General if the amount exceeds $10,000 and which recommendation shall also set forth the facts relative to such loss or payment and shall state that such transaction, expenditure, loss, or payment appears to be free from fraud or collusion and incurred or made in good faith: *Provided further*, That the Comptroller General in all cases shall certify that such transaction, expenditure, loss, or payment appears to be free from fraud and collusion and incurred or made in good faith."

§ 96. Settlement of overpayments

Section has been omitted from the Code.

§ 97. Claims for arrears of pay and bounty already paid

"R.S. § 277" should be substituted for "section 72 of this title" and "of his office" following "records and files" should be omitted.

"July 31, 1894, c. 174, § 7, 28 Stat. 206" should be added to citation.

R.S. § 277, mentioned in text, was largely superseded by section 7 of Act July 31, 1894, c. 174, 28 Stat. 206. See section 72 of this title.

§ 98. Statement of balances due for arrears of pay and bounty

"Certiorari" should be substituted for "Appeal" wherever it appears.

"Feb. 13, 1925, c. 229, § 3, 43 Stat. 939" should be added to the credit.

Decisions of Court of Claims made subject to review by Supreme Court on certiorari or on certification to that court from Court of Claims, and not otherwise, see section 1255 of Title 28, Judiciary and Judicial Procedure.

§ 99. Affidavits and declarations in bounty cases or claims for back pay; certification of official character and signature of officer taking

Words "general persons" and "heretobefore" in last sentence are so in original but probably should read "general purposes" and "heretofore" respectively.

§ 100. Repealed. June 25, 1948, c. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, Act May 21, 1872, c. 178, 17 Stat. 137, relating to claim agents withholding discharge papers, is covered by section 290 of new Title 18, Crimes and Criminal Procedure.

Effective date. Section 20 of Act June 25, 1948, c. 645, 62 Stat. 862, provided that the repeal of this section should be effective as of Sept. 1, 1948.

§ 102. Payment of claims for pay and allowances

Words "within the jurisdiction of the Auditor for the Department of the Army or the Auditor for the Navy Department," should be substituted for "covered by paragraphs Numbered second and fourth of section 72 of this title".

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Cross References. Certificates in connection with pay and allowance accounts of civilian and military personnel of the Department of the Army and Navy Department, see section 836 of Appendix to Title 50, War and National Defense.

Receipt and examination of accounts of salaries and incidental expenses of the Department of the Army and Navy Department by the General Accounting Office, see section 72, paragraphs second and fourth, of this title.

§ 103. Accounts of Departments of War and the Navy

"July 31, 1894, c. 174, §§ 4, 10, 28 Stat. 205, 208" should be added to this section as an additional citation.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

§ 103a. Disbursing officers of Army, Navy, and Marine Corps; designation of deputies. When, in the opinion of the Secretary of the Army or the Secretary of the Navy, the exigencies of the service so require disbursing officers of the Army, Navy, and Marine Corps may, with the approval of the head of their executive department and the consent of their surety or sureties, if any, designate deputies for the purpose of having them make disbursements as their agents, sign checks drawn against their disbursing accounts with the Treasurer of the United States, and discharge all other duties required according to law or regulation to be performed by such disbursing officers, and the agent officer shall be subject, for his official misconduct, to all liabilities and penalties prescribed by law in like cases for the officer for whom he acts as deputy: *Provided*, That every deputy so designated for a disbursing officer who is bonded shall, if not already under bond, give bond as required by the head of the department concerned. (July 3, 1926, c. 775, 44 Stat. 888, amended July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.)

Function of disbursement of moneys of United States exercised by any agency has been transferred to Division of Disbursement in Treasury Department. Division of Disbursement has been consolidated in the Fiscal Service of the Treasury Department. See Ex.Ord.No.6166, § 4, June 30, 1940, 5 Fed.Reg. 2107, 54 Stat. 1231, and Reorg. Plan No. III, § 1(a) (1), eff.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

§ 103b. Death, incapacity or separation from office of disbursing officers of military departments; powers of deputies; bond

In case of the death, incapacity, or separation from office of a disbursing officer of any of the military departments the accounts of such disbursing officer may be continued and payments made in his name by his deputy disbursing officer for a period of time not to extend beyond the last day of the second month following the month in which such death, incapacity or separation shall occur. Such accounts and payments shall be allowed, audited, and settled in the manner prescribed by law; and the checks signed in the name of the former disbursing officer shall be honored by the Treasurer of the United States, in the same manner as if the former disbursing officer had continued in office. The former disbursing officer, his estate, or the surety on his official bond, shall not be subject to any legal liability or penalty for the official acts and defaults of the deputy disbursing officer acting in the name or in the place of the former disbursing officer under this section, but the deputy disbursing officer and his surety, shall be responsible therefor under his bond. The bond of the deputy disbursing officer shall be an amount at least equal to the minimum amount of the bond required of the disbursing officer. The Secretary of the military department concerned may, from time to time, require the deputy disbursing officer to renew and increase his bond to the United States. July 31, 1953, c. 300, 67 Stat. 296.

Legislative History: For legislative history and purpose of Act July 31, 1953, see 1953 U.S.Code Cong. and Adm.News, p. —.

§ 104. Accounts of paymasters of lost or captured public vessels

"July 31, 1894, c. 174, § 4, 28 Stat. 205" should be added to citation.

§ 105. Relief of disbursing officers of Navy

The General Accounting Office shall relieve any disbursing officer of the Navy charged with responsibility on account of loss or deficiency while in the line of his duty, of Government funds, vouchers, records, or papers, in his charge, where such loss or deficiency occurred without fault or negligence on the part of said officer: *Provided*, That the Secretary of the Navy

shall have determined that the officer was in the line of his duty, and the loss or deficiency occurred without fault or negligence on his part. The determination by the Secretary of the Navy of the aforesaid questions shall be conclusive upon the General Accounting Office. As amended Aug. 7, 1946, c. 770, § 1(21), 60 Stat. 868.

Act Aug. 7, 1946, cited to text, amended section by repealing the proviso which required the Secretary of the Navy to report to Congress all cases of relief granted disbursing officers under this section during any fiscal year.

Effect Of Other Laws. Section not affected by section 82a-1 of this title, see note under said section 82a-1.

Cross References. Temporary relief and credits to disbursing officers of Navy Department, see note under section 95a of this title.

Transfer of function of disbursement of public money from all other agencies to Fiscal Service, see note under section 103a of this title.

§ 106. Disbursements by order of commanding officer of Navy

Transfer of function of disbursement of public money from all other agencies to Fiscal Service, see note under section 103a of this title.

§ 107a. Same; delegation of authority by Secretary of State

The Secretary of State may delegate to subordinate officials the authority vested in him by section 107 of this title pertaining to certification of expenditures. July 5, 1946, c. 541, Title I, 60 Stat. 452; July 9, 1947, c. 211, Title I, § 101, 61 Stat. 280; June 3, 1948, c. 400, Title I, § 101, 62 Stat. 308; July 20, 1949, c. 354, Title I, § 101, 63 Stat. 449; Sept. 6, 1950, c. 896, ch. III, Title I, § 101, 64 Stat. 610; Oct. 22, 1951, c. 533, Title 1, § 101, 65 Stat. 577; July 10, 1952, c. 651, Title 1, § 101, 66 Stat. 550; Aug. 5, 1953, c. 328, Title I, § 101, 67 Stat. 368.

§ 108. Accounting by Navy Department for appropriations for obtaining information from abroad and at home

Catchline has been changed to read as above.

§ 109. Repealed. Aug. 17, 1950, c. 735, § 10 (a) (2), 64 Stat. 462

Section now covered by section 794–794f of Title 39, The Postal Service.

Effective date. Repeal as effective on the nineteenth day following Aug. 17, 1950, see note set out under section 794 of Title 39, The Postal Service.

§ 110. Suits on postmasters' bonds

"Solicitor of the Treasury" was originally changed to read "General Counsel for the Department of the Treasury" and has now been changed to read "Attorney General."

"Ex.Ord.No.6166, § 5, June 10, 1933" should be added to the credit.

Transfer to Department of Justice of function of prosecuting in the courts claims and demands by the Government of the United States, see Ex.Ord.No.6166, § 5, set out as note following section 132 of Title 5, Executive Departments and Government Officers and Employees.

No fees to be charged or collected from United States, see sections 604, 751, 1923 of Title 28, Judiciary and Judicial Procedure.

§§ 111, 112. Repealed. Aug. 17, 1950, c. 735, § 10 (a) (2), 64 Stat. 462

Sections now covered by sections 794–794f of Title 39, The Postal Service.

Effective date. Repeal as effective on the nineteenth day following Aug. 17, 1950, see note set out under section 794 of Title 39, The Postal Service.

§ 113. Repealed. Aug. 17, 1950, c. 735, § 10 (a) (3), 64 Stat. 462

Section now covered by sections 794–794f of Title 39, The Postal Service.

Effective date. Repeal as effective on the nineteenth day following Aug. 17, 1950, see not set out under section 794 of Title 39, The Postal Service.

§ 114. Repealed. Aug. 17, 1950, c. 735, § 10 (a) (4), 64 Stat. 462

Section now covered by sections 794–794f of Title 39, The Postal Service.

Effective date. Repeal as effective on the nineteenth day following Aug. 17, 1950, see note set out under section 794 of Title 39, The Postal Service.

§ 115. Compromise of judgments

Whenever a judgment is obtained for a debt or damages due the Post Office Department, and it satisfactorily appears that such judgment, or so much thereof as remains unpaid, cannot be collected by due process of

law, the Department of Justice may compromise such judgment, and accept in satisfaction less than the full amount thereof. R.S. § 295; July 31, 1894, c. 174, § 3, 28 Stat. 205; June 10, 1921, c. 18, § 304, 42 Stat. 24; Ex.Ord.No.6166, § 5, June 10, 1933.

Transfer to Department of Justice of function of decision whether to compromise case referred to that Department for prosecution or defense, see Ex.Ord.No. 6166, § 5, set out as note following section 132 of Title 5, Executive Departments and Government Officers and Employees.

§ 116. Papers in suits for delinquencies in Post Office Department

"July 31, 1894, c. 174, § 3, 28 Stat. 205" should be added to citation.

§ 119. Repealed. Dec. 8, 1945, c. 515, § 2, 59 Stat. 594, eff. Dec. 1, 1945.

Section, amended by Act June 10, 1921, c. 18, § 304, 42 Stat. 24, is now covered by section 528 of this title.

§ 120. Checks issued by Bureau of Pensions, Bureau of War Risk Insurance, and United States Veterans' Bureau, and for payment of salaries and wages; destruction; claims on, barred [Superseded]

This section has been superseded by Act June 22, 1926, c. 650, §§ 1, 2, 44 Stat. 761. See sections 121 and 122 of this title.

§ 121. Repealed. Oct. 25, 1951, c. 562, § 1 (17), 65 Stat. 638.

Section, Act June 22, 1926, c. 650, § 1, 44 Stat. 761, which related to destruction of paid United States checks and warrants, is now covered by sections 366–380 of Title 44, Public Printing and Documents.

§ 122. Claims on paid checks and warrants; limitations

All claims on account of any check, checks, warrant, or warrants appearing to have been paid shall be barred if not presented to the General Accounting Office within six years after the date of issuance of the check, checks, warrant, or warrants involved. (June 22, 1926, c. 650, § 2, 44 Stat. 761.)

Limitation period on forged or altered checks and warrants, see sections 129–131 of this title.

§ 123. Regulation of delivery in foreign countries of checks against funds of United States; prohibition in absence of assurance that payee will receive and be able to negotiate check

Hereafter no check or warrant drawn against funds of the United States, or any agency or instrumentality thereof, shall be sent from the United States (including its Territories and possessions) for delivery in a foreign country in any case in which the Secretary of the Treasury determines that postal, transportation, or banking facilities in general, or local conditions in the country to which such check or warrant is to be delivered, are such that there is not a reasonable assurance that the payee will actually receive such check or warrant and be able to negotiate the same for full value: *Provided*, That any check drawn against funds of the United States for benefits under the laws administered by the Veterans' Administration, for delivery in the United States, its Territories, or possessions, to a guardian, curator, conservator, or other person legally vested with the care of any person in a foreign country, shall be deemed to be drawn for delivery in such foreign country and subject to the provisions of sections 123–128 of this title, and the Secretary of the Treasury shall be furnished necessary notification by the Administrator of Veterans' Affairs as to each such check: *Provided further*, That the Administrator of Veterans' Affairs is authorized to except from the provisions of the foregoing proviso any check wherein the application of this amendment would result in reduction, discontinuance, or denial of benefits which otherwise might be used for the care of a dependent of such person. Oct. 9, 1940, c. 796, § 1, 54 Stat. 1086, as amended Dec. 2, 1942,

c. 659, 56 Stat. 1028; Proc.No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352.

References in text. Words "this amendment" in proviso beginning "That the Administrator of Veterans' Affairs is authorized" first appeared in amendment by Act Dec. 2, 1942, cited to text, adding this and preceding proviso.

Codification. The reference to the "Commonwealth of the Philippine Islands" was omitted in view of independence of the Philippines proclaimed by the President of the United States in Proc. No. 2695, cited to text and set out as a note under section 1240 of Title 48, Territories and Insular Possessions. Said proclamation was issued pursuant to said section 1240 of Title 48.

Amendments. Act Dec. 2, 1942, cited to text, amended section by adding provisos.

§ 124. Same; withholding export-prohibited checks; release; procedure resulting in deposit in special account for withheld foreign checks

Any check or warrant, the sending of which is prohibited under the provisions of section 123 of this title, shall be held by the drawer until the close of the calendar quarter next following its date, during which period such check or warrant may be released for delivery if the Secretary of the Treasury determines that conditions have so changed as to provide a reasonable assurance that the payee will actually receive the check or warrant and be able to negotiate it for full value. At the end of such quarter, unless the Secretary of the Treasury shall otherwise direct, the drawer shall transmit all checks and warrants withheld in accordance with the provisions of sections 123–128 of this title to the drawee thereof, and forward a report stating fully the name and address of the payee; the date, number, and amount of the check or warrant; and the account against which it was drawn, to the Bureau of Accounts of the Treasury Department. The amounts of such undelivered checks and warrants so transmitted shall thereupon be transferred by the drawee from the account of the drawer to a special deposit account with the Treasurer of the United States entitled "Secretary of the Treasury, Proceeds of Withheld Foreign Checks", at which time such checks and warrants shall be marked "Paid into Withheld Foreign Check Account". Thereafter the drawee shall deliver such checks and warrants, together with other paid checks and warrants, to the Comptroller General of the United States, who shall allow credit therefor in the accounts of the drawer and the drawee.

In the case of checks representing payments under laws administered by the Veterans' Administration, when the amount transferred to the special deposit account on behalf of any individual payee equals $1,000, the amounts of any further checks, except checks under contracts of insurance, payable to such payee under such laws shall be covered into the Treasury as miscellaneous receipts. The deposit in the special deposit account or the covering into the Treasury as miscellaneous receipts, pursuant to the provisions of this section, of the amount of any check issued under laws administered by the Veterans' Administration shall be considered for all purposes, including determinations of rights under section 516 of Title 38, as amended, as payment to the person entitled thereto. Oct. 9, 1940, c. 796, § 2, 54 Stat. 1086.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 125. Same; payments from special deposit account for withheld foreign checks

Payment of the amounts which have been deposited in the special deposit account in accordance with section 124 of this title shall be made by checks drawn against such special deposit account by the Secretary of the Treasury, only after the claimant shall have established his right to the amount of the check or warrant to the satisfaction of the Secretary of the Treasury (or, in the case of claims based upon checks rep-

resenting payments under laws administered by the Veterans' Administration, to the satisfaction of the Administrator of Veterans' Affairs) and the Secretary of the Treasury has determined that there is a reasonable assurance that the claimant will actually receive such check in payment of his claim and be able to negotiate the same for full value.

In the case of the death of the payee of any check in payment of pension, compensation, or emergency officers' retirement pay accruing under laws administered by the Veterans' Administration, while the amount thereof remains in the special deposit account, such amount shall, subject to the other conditions of sections 123–128 of this title, be payable as follows: (a) Upon death of the veteran, first to the widow; if there is no widow, to his child or children under the age of eighteen at his death; (b) upon death of the widow, to her children under the age of eighteen years at her death; (c) upon the death, prior to disbursement of all or any part of the apportioned amount, of an apportionee of a part of the veteran's pension, compensation, or emergency officers' retirement pay, such apportioned amount not disbursed shall be payable to the veteran; (d) in all other cases no disbursement whatsoever of such pension, compensation, or emergency officers' retirement pay shall be made or allowed except so much as may be necessary to reimburse the person who bore the expense of burial: *Provided, however,* That no disbursement shall be made unless claim therefor be filed in the Veterans' Administration within one year from the date of the death of the person entitled and perfected by the submission of the necessary evidence within six months from the date of the request of the Veterans' Administration therefor. Such benefits shall include only amounts due and unpaid at the time of death under then existing ratings or decisions. Oct. 9, 1940, c. 796, § 3, 54 Stat. 1087.

§ 126. Same; application of sections 124 and 125 to checks withheld pursuant to Executive Order or administrative action

The provisions of sections 124 and 125 of this title shall apply to all checks or warrants the delivery of which is now being, or may hereafter be, withheld pursuant to Executive Order Numbered 8389 of April 10, 1940, as amended, as well as to all checks or warrants the delivery of which is now being withheld pursuant to administrative action, which administrative action is hereby ratified and confirmed: *Provided,* That any check or warrant the delivery of which has already been withheld for more than one quarter prior to October 9, 1940, shall be immediately delivered to the drawee thereof for disposition in accordance with the provisions of sections 124 and 125 of this title: *Provided further,* That nothing in sections 123–128 of this title shall be construed to dispense with the necessity of obtaining a license to authorize the delivery and payment of checks in payment of claims under section 125 of this title in those cases where a license is now or hereafter may be required by law to authorize such delivery and payment. Oct. 9, 1940, c. 796, § 4, 54 Stat. 1087.

Ex. Ord. No. 8389, mentioned in text, which is set out in note under section 95 of Title 12, Banks and Banking.

added sections 9–14 to Ex. Ord. No. 6560,

§ 127. Same; rules and regulations

The Secretary of the Treasury is hereby authorized to prescribe such rules and regulations as he in his discretion may deem necessary or proper for the administration and execution of sections 123–128 of this title. Oct. 9, 1940, c. 796, § 5, 54 Stat. 1087.

§ 128. Same; checks in payment of salaries or wages or for goods purchased by United States in foreign countries

Nothing contained in sections 123–128 of this title shall be construed as affecting or applying to checks or warrants issued in payment of salaries or wages or for goods purchased by the Government of the United States in foreign countries. Oct. 9, 1940, c. 796, § 6, 54 Stat. 1086.

§ 129. Limitation period on claims on forged or altered checks and warrants

No proceeding in any court shall be brought by the United States or by any agency or official of the United States to enforce the liability of any endorser, transferor, or depositary, or financial agent, arising out of a forged or unauthorized signature or endorsement upon or alteration of any check, checks, warrant, or warrants issued by the Secretary of the Treasury, the Postmaster General, the Treasurer and Assistant Treasurers of the United States, or by disbursing officers and agents of the United States, unless such proceeding is commenced within six years after the presentation to the Treasurer of the United States or other drawee of such issued checks or warrants for payment of such check, checks, warrant, or warrants, or unless within that period written notice shall have been given by the United States or an agency thereof to such endorser, transferor, or depositary, or financial agent of a claim on account of such liability. Unless a court proceeding shall have been brought or such notice given within the period prescribed in this section, any claim against such endorser, transferor, or depositary, or financial agent on account of such liability shall be forever barred: *Provided*, That in connection with any claim presented to the General Accounting Office within the time limitation prescribed by section 122 of this title, the period within which such a proceeding may be brought or such notice given shall be extended by an additional one hundred and eighty days, and unless such notice shall be given or a court proceeding brought within such extended period any claim against such endorser, transferor, depositary, or financial agent on account of such liability shall be forever barred. Mar. 6, 1946, c. 48, § 1, 60 Stat. 31.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in the Secretary to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, and Assistant Treasurers, referred to in this section, are officers of the Treasury Department.

Congressional Comment: For legislative history and purpose of Act Mar. 6, 1946, cited to text, see 1946 U.S.Code Cong. Service, p. 1070.

1. Retroactive effect

Under this section, the United States could not maintain actions arising out of forged endorsements of government checks paid more than six years prior to enactment of sections 129–131 of this title although written notice of liability was given endorsers before the passage of these sections but not within six years after date of presentation for payment as therein provided. U. S. v. Union Planters Nat. Bank & Trust Co., C.A. Miss.1949, 175 F.2d 684.

This section is remedial in character and is retroactive. U. S. v. Mercantile Nat. Bank at Dallas, D.C.La.1946, 67 F. Supp. 759, reversed on other grounds 161 F.2d 935.

2. Pleading

Where federal government issued the checks on the United States treasury to an imposter pursuant to a fraudulent application to the Veterans Administration, banks which cashed checks for the imposter could not be held liable, in view of the "imposter rule", to the federal government on their guarantees of endorsement. U. S. v. Continental-American Bank & Trust Co., D.C.La.1948, 79 F.Supp. 450, affirmed 175 F.2d 271, certiorari denied 70 S.Ct. 146, 338 U.S. 870, 94 L.Ed. 534.

3. Burden of proof

On defendant's motion for summary judgment in action by United States to enforce liability arising out of forgery, the burden of showing facts showing that action was barred by limitation was on movant. U. S. v. Mercantile Nat. Bank at Dallas, D.C.La.1946, 67 F.Supp. 759, reversed on other grounds 161 F.2d 935.

§ 130. Allowance of credit in Treasurer's accounts for payment of forged or altered checks or warrants

The Comptroller General of the United States is authorized and directed to allow credit in the accounts of the Treasurer of the United States for the amount of any check, checks, warrant, or warrants with respect to which court proceedings shall have been barred pursuant to the provisions of sections 129–131 of this title upon a showing that the barring of such proceedings did not result from any negligence on the part of

the Treasurer of the United States in failing to give the notice required by the provision of section 129 of this title. Mar. 6, 1946, c. 48, § 2, 60 Stat. 31.

Congressional Comment: For legislative history and purpose of Act Mar. 6, 1946, cited to text, see 1946 U.S.Code Cong. Service, p. 1070.

§ 131. Limitation period affected by concealment of knowledge of forgery or alteration of checks and warrants

If any endorser, transferor, or depositary, or financial agent who is liable to any of the actions mentioned in sections 129–131 of this title shall fraudulently conceal the cause of such action from the knowledge of the United States or any agency or official of the United States entitled to bring such action, the action may be commenced at any time within two years after the United States or any agency or official of the United States who is entitled to bring the same shall discover that the United States or any agency or official of the United States had such cause of action, although such action would be otherwise barred by the provisions of sections 129–131 of this title. Mar. 6, 1946, c. 48, § 3, 60 Stat. 31.

Congressional Comment: For legislative history and purpose of Act Mar. 6, 1946, cited to text, see 1946 U.S.Code Cong. Service, p. 1070.

§ 132. Payment of certain unpaid Government checks; transfer to special-deposit account; settlement by General Accounting Office; limitation on claims

With the exception of checks issued on account of public-debt obligations and transactions regarding the administration of banking and currency laws, the amounts of all original and substitute checks drawn on the Treasurer of the United States, including those drawn by wholly owned and mixed-ownership Government corporations, or drawn by authorized officers of the United States on designated depositaries, which have not been paid prior to the close of the fiscal year next following the fiscal year in which the checks were issued, shall be transferred from the account of the drawer or the account then available for the payment thereof to a special-deposit account or accounts on the books of the Treasurer of the United States.

(b) [1]With the exception of checks issued on account of public-debt obligations and transactions regarding the administration of banking and currency laws, any original or any substitute checks heretofore or hereafter drawn on the Treasurer of the United States, including those drawn by wholly owned and mixed-ownership Government corporations, or drawn by authorized officers of the United States on designated depositaries which have not been paid prior to the close of the fiscal year next following the fiscal year in which the checks were issued and checks issued in payment of claims settled by the General Accounting Office on account of any of such checks shall be payable from the special-deposit account or accounts established pursuant to this section: *Provided*, That in the following classes of cases any original or substitute check shall be payable from the special-deposit account or accounts only after settlement by the General Accounting Office: (1) Where the check is drawn on a designated depositary, (2) where the owner or holder of the check has died or is incompetent, (3) where on presentation of the check for payment the Treasurer of the United States is on notice of a doubtful question of law or fact, and (4) where the check is over ten years old: *And provided further*, That the limitation imposed in respect to certain claims or demands against the United States by sections 71a and 237 of this title, shall not be deemed to apply to original or substitute checks heretofore or hereafter drawn on the Treasurer of the United States, including those drawn by wholly owned and mixed-ownership Government corporations, or drawn by authorized officers of the United States on designated depositaries, but nothing contained in sections 132–134, 154, and 528 of this title shall be deemed to affect the limitation imposed in respect to claims

on account of certain checks by section 122 of this title. July 11, 1947, c. 222, § 1, 61 Stat. 308.

1 So in original. Section as enacted did not contain a subsec. (a).

Effective date. Section 5 of Act July 11, 1947, cited to text, provided that sections 132–134 of this title, amendments of sections 154 and 528 (a, c, e, f, g) of this title, and repeal of sections 149–153 and 725t of this title should take effect on July 1, 1947.

Congressional Comment: For legislative history and purpose of Act July 11, 1947, cited to text, see 1947 U.S.Code Cong.Service, p. 1282.

§ 133. Transfer of balances from outstanding-liabilities account to special-deposit account; availability for payment

The balances deposited to the credit of the outstanding-liabilities account of any fiscal year pursuant to section 21 of the Permanent Appropriation Repeal Act, 1934, and which have not been covered into the surplus fund of the Treasury shall be transferred to the foregoing special-deposit account or accounts and together with the amounts transferred thereto under the provisions of section 156 of this title shall be available to pay any check payable from such account or accounts. July 11, 1947, c. 222, § 2, 61 Stat. 309.

References in text. Section 21 of the Permanent Appropriation Repeal Act, 1934, referred to in text, was repealed by section 4(a) of Act July 11, 1947, cited to text.

Effective date. Effective date of section, see note under section 132 of this title.

§ 134. Transfer from special-deposit account to receipt account; rules and regulations

The Secretary of the Treasury is authorized to take such action as may be necessary to transfer at appropriate intervals from the foregoing special-deposit account or accounts to the appropriate receipt account or accounts on the books of the Treasury any amounts not required to affect the purposes of sections 132–134, 154, and 528 of this title and with the concurrence of the Comptroller General to make such rules and regulations as he may deem necessary or proper for the administration of the provisions of said sections. July 11, 1947, c. 222, § 3, 61 Stat. 309.

Effective date of section, see note under section 132 of this title.

CHAPTER 3.—THE TREASURER

Sec.
143a. Deputy Assistant Treasurer designated Assistant Treasurer [New].
156. Relief for payments made without negligence [New].
157. Reimbursement of Division of Disbursement and Office of Treasurer for services rendered other Federal agencies; credit to appropriation; definitions [New].

§ 141. Treasurer

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Office of the Treasurer of the United States and certain other offices and agencies and their functions were consolidated into Fiscal Service of Treasury Department, the function of said office to be administered by Treasurer of the United States, by Reorg. Plan No. III, § 1(a), eff. June 30, 1940, set out in note under section 133t of Title 5. See also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds.

Cross References. Compensation schedules for professional, subprofessional, and scientific services, see section 673 of Title 5, Executive Departments, Government Officers and Employees.

§ 142. Same; bond

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg.

Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 143. Assistant Treasurer

"Mar. 4, 1923, c. 265, 42 Stat. 1488" should be added to citation.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 143a. Deputy Assistant Treasurer designated Assistant Treasurer

The title Deputy Assistant Treasurer of the United States is changed and shall hereafter be designated as Assistant Treasurer of the United States. (Apr. 9, 1926, c. 110, 44 Stat. 237.)

§ 144. Assistant Treasurer; when may act as Treasurer; Acting Treasurer; Special Assistant Treasurer

The Treasurer may, in his discretion, and with the consent of the Secretary of the Treasury, authorize the Assistant Treasurer to act in the place and discharge any or all of the duties of the Treasurer of the United States; and the Secretary of the Treasury may appoint from among the personnel of the Treasurer's Office any person to be Acting Treasurer during the absence or illness of both the Treasurer and Assistant Treasurer; and the Secretary of the Treasury may at any time, on the recommendation of the Treasurer, appoint from among the clerks in the Treasurer's Office any one or more of said clerks to be a Special Assistant Treasurer, with authority to sign certificates of deposit, checks, letters, telegrams, and other official documents in connection with the business of the Treasurer's Office, and who shall serve in this capacity without additional salary: *Provided, however*, That no appointments shall be made under the provisions of this section until the official bond given by the Treasurer shall be made in terms to cover and apply to the acts and defaults of every person appointed hereunder. Each person so appointed shall, moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct in like cases of the Treasurer. (As amended Apr. 24, 1936, c. 245, 49 Stat. 1237.)

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 145. Transfer and appointment of employees detailed to office of Treasurer

Section has been omitted from the Code.

§ 146. Divisions of Issue and of Redemption

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 147. Treasurer; duties

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Execu-

tive Departments and Government Officers and Employees.

Cross References. Receipt, retention, and disbursement of public funds waiver of requirements of existing law, see section 66c of this title.

§ 148. Same; payment of salaries of Senators, Members, and officers of Congress

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. Senate Finance Clerk to be successor of Secretary of Senate as disbursing officer, in event of his death, resignation or disability, see section 64a of Title 2, The Congress.

§§ 149–153. Repealed. July 11, 1947, c. 222, § 4(a), 61 Stat. 309

Section 151 was from R.S. §§ 236, 308; June 10, 1921, c. 18, § 305, 42 Stat. 24.

Section 152 was from R.S. §§ 236, 309; June 10, 1921, c. 18, §§ 305, 309, 42 Stat. 24, 25.

Effective date. Section 5 of Act July 11, 1947, c. 222, 61 Stat. 308, provided in part that repeal of sections 149–153 of this title should take effect on July 1, 1947.

§ 154. Reports of unpaid checks by General Accounting Office

At the termination of each fiscal year the General Accounting Office shall report to the Secretary of the Treasury all checks issued by any disbursing officer of the Government or its wholly owned or mixed-ownership corporations, as shown by his accounts rendered to the General Accounting Office, or otherwise, which shall then have been outstanding and unpaid for one full fiscal year after the fiscal year in which issued, stating in such report the date, number, and amount of each check and the symbol on which it was drawn. As amended July 11, 1947, c. 222, § 4(b), 61 Stat. 309.

1947 Amendment. Act July 11, 1947, cited to text, added provision requiring report of checks issued by government corporations, changed time for report on outstanding and unpaid checks from three years or more to one fiscal year after fiscal year in which issued, and changed provision as to contents of report.

Effective date. Effective date of section, see note under section 132 of this title.

Congressional Comment: For legislative history and purpose of Act July 11, 1947, cited to text, see 1947 U.S.Code Cong.Service, p. 1282.

§ 155. Restrictions upon Treasurer

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 156. Relief for payments made without negligence

Whenever any check, draft, or warrant, drawn upon the Treasurer of the United States or upon the Treasurer of the United States through any Federal Reserve bank, or any public debt obligation of the United States, including any obligation of any type whatever, the payment of which is guaranteed by, or assumed by, the United States, heretofore has been or hereafter may be paid in due course and without negligence by or on behalf of the Treasurer of the United States, the Treasurer shall not be liable for any such payment, and the Comptroller General of the United States is authorized and directed to allow credit in the Treasurer's account for such payment: *Provided*, That nothing contained in this section shall be construed to relieve any person, other than the Treasurer of the United States, from any civil or criminal liability now existing or which may hereafter exist on account of any such check, draft, warrant or public debt obligation. Aug. 4, 1947, c. 455, § 3, 61 Stat. 309.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in

note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 157. Reimbursement of Division of Disbursement and Office of Treasurer for services rendered other Federal agencies; credit to appropriation; definitions

When any service authorized by law and directed by the Secretary of the Treasury is performed or to be performed by the Division of Disbursement or the Office of the Treasurer of the United States of the Department of the Treasury for any other Government agency, and no funds have been appropriated to such Division or Office for the performance of such service, the Government agency for which such service is performed or to be performed is authorized to advance for credit or pay to such Division or Office such sums as may be necessary to cover the expenses incident to the rendition of such service.

(b) Notwithstanding the provisions of section 484 of this title, any sums transferred pursuant to subsection (a) of this section may be credited to the appropriations of such Division or Office current at the time of the performance of such service.

(c) As used in this section—

(1) the term "Government agency" shall include any department, office, agency, or establishment of the Government other than the Department of the Treasury, and any wholly owned or mixed-ownership Government corporation; and

(2) the term "service" shall include, but shall not be limited to, service rendered in (A) the collection and disbursement of funds, (B) the servicing of bonds, (C) the rendition of accounts, and (D) the keeping of bank and checking accounts. Aug. 14, 1950, c. 705, 64 Stat. 440.

Legislative History: For legislative history and purpose of Act Aug. 14, 1950, cited to text, see 1950 U.S.Code Cong. Service, p. 2970.

CHAPTER 4.—THE REGISTER

§ 161. Register

There shall be in the Bureau of the Public Debt of the Fiscal Service in the Department of the Treasury a Register of the Treasury, who shall be appointed by the President, by and with the advice and consent of the Senate. R.S. § 312; Mar. 4, 1923, c. 265, 42 Stat. 1488; Reorg. Plan No. III, § 1 (a) (1) (4), eff. June 30, 1940, 4 Fed.Reg. 2107, 54 Stat. 1231.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Office of Register of the Treasury and certain other offices and agencies and their functions were consolidated into Bureau of the Public Debt in Fiscal Service of Treasury Department by Reorg. Plan No. III, § 1(a), eff. June 30, 1940, set out in note under section 133t of Title 5. See, also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds.

§ 162. Same; duties

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 163. Restrictions upon register

"July 31, 1894, c. 174, §§ 3, 4, 28 Stat. 205; June 10, 1921, c. 18, §§ 301, 310, 42 Stat. 23, 25" should be added to citation.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers,

agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 164. Assistant register

"Mar. 4, 1923, c. 265, 42 Stat. 1488" should be added to citation.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§§ 165, 166

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

CHAPTER 5.—THE BUREAU OF ENGRAVING AND PRINTING

Sec.
180. Night differential pay for employees in clerical-mechanical service [New].
181. Reimbursement for work performed; prompt payment [New].
181a. Revolving fund [New].
(a) Establishment and capitalization.
(b) Assumption of obligations and commitments.
(c) Composition.
(d) Financing of operation and maintenance costs.
(e) Disposition of surplus.
(f) Establishment of special deposit account.
181b. Business-type budget [New].
181c. Accounting and internal control [New].
181d. Annual audits [New].
181e. Delegation of authority by Secretary of the Treasury [New].

§ 171. Powers of and reports by director

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§§ 172, 173.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. Civilian officers and employees of United States wherever stationed, leave of absence of, see section 30b of Title 5, Executive Departments, Government Officers and Employees.

See section 30 of Title 5.

§ 176. Repealed. Aug. 4, 1950, c. 558, § 8 (b), 64 Stat. 410, eff. July 1, 1951

§ 177. Bonds, notes, and checks; printing on presses and power presses directed by Secretary of Treasury; internal revenue stamps

All before the word "checks" in line 5 should be omitted and the words "any or all of which" after "United States" in lines 8 and 9 should be omitted.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 178. Repealed. Aug. 4, 1950, c. 558, § 8(a), 64 Stat. 410, eff. July 1, 1951.

§ 179. Limitation on expenditure of funds

Section related to appropriations authorized for the fiscal year of its enactment and has been omitted from the Code.

§ 180. Night differential pay for employees in clerical-mechanical service

All employees of the Bureau of Engraving and Printing who hold positions in the clerical-mechanical service, and who are assigned to perform their work at night, shall be paid in respect of their regular work week of forty hours and except when in leave status, a rate of compensation which is 15 per centum in excess of the day rate for the same work: *Provided,* That night work shall be construed to mean all work on any established shift or tour of duty, half or more of which occurs after 6 o'clock postmeridian or before 6 o'clock antemeridian. July 1, 1944, c. 357, 58 Stat. 648.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 181. Reimbursement for work performed; prompt payment

Whenever any work or services are requisitioned from the Bureau of Engraving and Printing, Treasury Department (hereinafter referred to as the "Bureau"), the requisitioning agency shall make payment therefor from funds available to it for such purposes at prices deemed by the Secretary of the Treasury (hereinafter referred to as the "Secretary") to be adequate to recover the amount of direct and indirect costs of the Bureau, including its administrative expenses, incidental to performing the work or services requisitioned. Requisitioning agencies shall make payment to the Bureau promptly on the basis of bills rendered by the Bureau. Aug. 4, 1950, c. 558, § 1, 64 Stat. 408.

Effective date. Section 8(d) of Act Aug. 4, 1950, cited to text, provided that sections 181-181e of this title and the repeal of sections 176 and 178 of this title should become effective as of July 1, 1951.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Lapsing of unexpended balances of appropriations. Section 3 of Act Aug. 4, 1950, cited to text, provided that: "The unexpended balances of all appropriations made to the Bureau for the fiscal years 1950 and 1951 shall lapse on June 30, 1951, and shall be transferred immediately to the surplus fund of the Treasury."

Provisions of sections 181-181e of this title as controlling. Section 8(c) of Act Aug. 4, 1950, cited to text provided that: "In the case of all other laws or parts of laws inconsistent with the provisions of this Act [sections 181-181e of this title], the provisions of this Act [said sections] shall govern."

Legislative History: For legislative history and purpose of Act Aug. 4, 1950, cited to text, see 1950 U.S.Code Cong. Service, p. 2906.

§ 181a. Revolving fund—Establishment and capitalization

(a) There is established, as of July 1, 1951, a Bureau of Engraving and Printing Fund (hereinafter referred to as the "fund"). The fund shall be capitalized on the basis of—

(1) an initial appropriation by the Congress to the fund of not to exceed $5,000,000 and such additional amounts as from time to time may be appropriated for the purposes of the fund, which sums are authorized to be appropriated out of any money in the Treasury not otherwise appropriated;

(2) all of the receivables and the inventories and other physical assets of the Bureau as of the close of business June 30, 1951, exclusive of build-

ings occupied, land, and the unexpended balances of appropriations made to the Bureau, such inventories and other physical assets to be capitalized at fair and reasonable values to be determined by the Secretary; and

(3) assumption by the fund of all of the liabilities of the Bureau as of the close of business on June 30, 1951.

Assumption of obligations and commitments

(b) The fund shall assume all of the obligations and other commitments of the Bureau outstanding as of the close of business on June 30, 1951.

Composition

(c) The fund shall include all property and other physical assets acquired by the Bureau except buildings and land, all amounts recoverable as provided in section 181 of this title for the costs of work and services performed by the Bureau, and all other amounts receivable by the Bureau from whatever sources derived, including all proceeds arising from disposition of any property or other assets acquired by the fund.

Financing of operation and maintenance costs

(d) The fund shall be available without fiscal-year limitation for financing all costs and expenses of operating and maintaining the Bureau subsequent to June 30, 1951.

Disposition of surplus

(e) Any surplus accruing to the fund in any fiscal year shall be paid into the general fund of the Treasury as miscellaneous receipts during the ensuing fiscal year: *Provided*, That any such surplus may be applied first to restore any impairment of the capital of the fund by reason of variations between the prices charged for work or services and the amount determined to be the actual cost of performing such work or services.

Establishment of special deposit account

(f) A special deposit account for the fund shall be established with the Treasurer of the United States. The special deposit account shall be credited wtih the sums made available by appropriations authorized in sections 181–181e of this title and with all receipts of the Bureau without the covering of such receipts into the Treasury. The balance in the special deposit account shall be available for making disbursements authorized on behalf of the fund in accordance with sections 82b–82e of this title, through the disbursing facilities of the Treasury Department. Aug. 4, 1950, c. 558, § 2, 64 Stat. 409.

Effective date. Section as effective July 1, 1951, see note set out under section 181 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Bureau of Engraving and Printing, referred to in this section, is an agency in the Treasury Department, and the Treasurer of the United States, also referred to in this section, is an officer in such Department.

§ 181b. Business-type budget

The Secretary shall prepare and submit an annual business-type budget program for the Bureau. Aug. 4, 1950, c. 558, § 4, 64 Stat. 409.

Effective date. Section as effective July 1, 1951, see note set out under section 181 of this title.

§ 181c. Accounting and internal control

There shall be installed and maintained in the Bureau an integrated system of accounting, including proper features of internal control, which will (a) assure adequate control over all assets and liabilities of the fund; (b) develop accurate direct and indirect costs of production of the Bureau

for making recoveries of such costs on the basis of work requisitioned; (c) make provision for replacement of capitalized equipment and other fixed assets through the maintenance of adequate depreciation reserves based on original cost or on appraised values as authorized in section 181a (a) (2) of this title; (d) afford full disclosure with respect to the financial condition and operations of the fund according to the accrual method of accounting; and (e) supply on the basis of accounting results the data for the annual budget of the Bureau with respect to the last completed fiscal year. The system of accounting shall conform to principles and standards prescribed by the Comptroller General of the United States to accomplish the purposes of this section, and shall be subject to such review by the Comptroller General as may be necessary to assure its conformance with the principles and standards prescribed and its effectiveness in operation. Aug. 4, 1950, c. 558, § 5, 64 Stat. 409.

Effective date. Section as effective July 1, 1951, see note set out under section 181 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Bureau of Engraving and Printing, referred to in this section, is an agency in the Treasury Department.

§ 181d. Annual audits

The financial transactions, accounts, and reports of the fund shall be audited on an annual basis by the General Accounting Office and a copy of each report on audit shall be furnished promptly to the President, the Congress, and the Secretary. Aug. 4, 1950, c. 558, § 6, 64 Stat. 410.

Effective date. Section as effective July 1, 1951, see note set out under section 181 of this title.

§ 181e. Delegation of authority by Secretary of the Treasury

Any power or authority conferred upon the Secretary by sections 181–181e of this title may be delegated by him to any officer or employee of the Treasury Department. Aug. 4, 1950, c. 558, § 7, 64 Stat. 410.

Effective date. Section as effective July 1, 1951, see note set out under section 181 of this title.

CHAPTER 6.—DEBTS DUE BY, OR TO, THE UNITED STATES

Sec.
215a. [New; Repealed].
222a, 222b. [New; Repealed].
222c. Settlement of claims for loss of property in military, naval, air, or Defense Department Service [New].
(a) Determination; limitation.
(b) Payments to survivor.
(c) Definition.
(d) Time limitation for presentation of claims.
(e) Conclusiveness of settlement; reports.
222d. Availability of appropriations [New].
222e. [New; Repealed].
222f. Availability of appropriations [New].
222g. [New; Repealed].
222h. Applicability of sections 222e–222g and 223d to Coast and Geodetic Survey and Public Health Service [New].
223a. [New; Repealed].
223b. Settlement of claims incident to activities of Army or Department of the Army [New].
223c. Same; appropriations [New].
Sec.
224b. Settlement of claims for damages caused by Federal Bureau of Investigation [New].
224c. Settlement of claims for damages caused by Post Office Department and services [New].
223d. Settlement of claims incident to activities of Navy or Navy Department [New].
223e. Same; applicability of section 223b of this title [New].
224a. Settlement of claims for personal injury or death in foreign countries [New].
224d. Settlement of claims for damages caused by United States armed forces in foreign countries [New].
224e. Same; payments out of certain appropriations [New].
224f. Same; application to existing law [New].
224g. Same; applicable claims [New].
224h. Same; application to Coast Guard [New].
224i. Same; settlement of claims by commission [New].
224i—1. Same; application to Philippine Islands [New].

Sec.
224j. Settlement of claims for loss or damage resulting from use or occupancy of real estate by Army [New].
237. Same; limitation of time on claims and demands [New].
238. Settlement of damage claims of Federal penal and correctional institutions' employees [New].

Settlement of claims by American nationals against Mexican government, see sections 661 et seq. of Title 22, Foreign Relations and Intercourse.

§ 191. Priority established

As to priority of sureties, see annotations under section 193 of this title. See also annotations under section 101 of Title 11.

Penalty for overstatement of claims under Contract Settlement Act of 1944 as debt due United States under this section, see section 108 of Title 41, Public Contracts.

⅛. Historical

"Neither the language of § 64 [of the Bankruptcy Act, section 104 of Title 11], sub. a nor the Congressional history of the legislation here involved supports the proposition that § 64 [of the Bankruptcy Act, section 104 of Title 11], sub. a was intended to eliminate, either partially or wholly, the priority of claims of the United States in nonbankruptcy proceedings.

"The provisions of [R.S.] § 3466 [this section] have been in force since 1797, without significant modification. 1 Stat. 515. The first three federal bankruptcy acts [Act Apr. 4, 1800, c. 19, § 62, 2 Stat. 36; Act Aug. 19, 1841, c. 9, § 5, 5 Stat. 444; Act Mar. 2, 1867, c. 176, § 28, 14 Stat. 530] specifically preserved the priority of the United States over all other claimants in bankruptcy proceedings in the federal courts. Section 64 of the Bankruptcy Act of 1898 [section 104 of Title 11], however, disturbed this state of affairs. It provided an order of distribution of the assets of bankrupt estates in which certain wage claims preceded non-tax claims of the United States. While [said] § 64 [section 104 of Title 11] has been altered since 1898 in several particulars, the priority of wage claims over non-tax claims of the United States has continued." United States v. Emory, 1942, 62 S.Ct. 317, 314 U.S. 423, 86 L.Ed. 315, 48 Am.Bankr.Rep.N.S. 499.

¼. Constitutionality

This section providing that whenever the estate of any deceased debtor in the hands of the executors or administrators is insufficient to pay all debts due from the deceased, the debts due the United States shall be first satisfied, is not unconstitutional as an unauthorized interference by the federal government with the sovereign power of the commonwealth to establish the manner and order the debts due from the estates of its decedents shall be paid. In re Kuhn's Estate, 1941, 21 A.2d 513, 146 Pa. Super. 1.

½. Repeal or enlargement

This section has not been repealed or enlarged or limited by congressional acts with reference to funds of Osage Indians. U. S. v. Johnson (D.C.Okl.1935) 11 F.Supp. 897, affirmed 87 F.2d 155.

1. Nature of right

This section does not create a lien, but establishes a priority. U. S. v. O'Dell, C.C.A.Mich.1947, 160 F.2d 304.

A claim of the United States for priority of payment does not stand on any sovereign prerogative, but is exclusively founded on the actual provisions of their own statutes. Wagner v. McDonald, C.C.A.Mo.1938, 96 F.2d 273.

The priority of payment, accorded the United States by this section is not technically a "lien", but is analogous thereto. In re Meyer's Estate, 1946, 48 A.2d 210, 159 Pa.Super. 296.

This section is purely a priority statute, and creates no lien. Ernst v. Guarantee Millwork, 1939, 93 P.2d 494, 200 Wash. 195.

Right of United States to priority in payment of debts due it is not an attribute of sovereignty, but depends on acts of Congress. State ex rel. Rankin v. Wibaux County Bank of Wibaux (1929) 281 P. 341, 85 Mont. 532, certiorari denied 50 S.Ct. 239, 281 U.S. 725, 74 L.Ed. 1142.

Priority of debts due the United States does not rest on any common-law principle but is founded upon this section based on the common-law right accorded the sovereign of England as a royal prerogative, but power of states to create priorities arises from the common law. Sturgill v. Lovell Lumber Co., W.Va.1951, 67 S.E.2d 321.

Government's right to lien is not involved in claim of priority for taxes due from corporation on general assignment. Manhattan Rubber Mfg. Co. v. Lucey Mfg. Corporation, D.C.N.Y.1928, 26 F.2d 839.

The priority accorded the United States when an insolvent person is indebted to the United States comes from the law and not upon any assertion of powers of sovereignty, since a "debt" may arise out of a business transaction or out of an act of sovereignty. In re Wilson, D.C.Tex.1938, 23 F.Supp. 236.

2. General rules of construction

To same effect as second paragraph of original annotation, see In re Mitchell's Restaurant, 1949, 67 A.2d 64, 31 Del. Ch. 121.

This section must be liberally construed. Wagner v. McDonald, C.C.A.Mo. 1938, 96 F.2d 273; In re Waxaid Co., D.C. Md.1943, 55 F.Supp. 289, 55 Am.Bankr. Rep.N.S. 563, 56 Am.Bankr.Rep.N.S. 236.

This section must be liberally construed. U. S. ex rel. Ray v. Porter (D. C. Idaho, 1927) 24 F.(2d) 139; Andrew v. Crawford County State Bank of Denison (1929) 224 N. W. 499, 208 Iowa, 1248, certiorari denied 50 S.Ct. 239, 281 U.S. 725, 74 L.Ed. 1142; Bliss v. U. S., C.C.A.Neb.1930, 44 F.2d 909; Hatch v. Morosco Holding Co., Inc., D.C.N.Y.1932, 56 F.2d 640.

This section should be construed in connection with section 192 of this title. Hatch v. Morosco Holding Co., Inc. (D. C. N. Y. 1932) 56 F.(2d) 640, aff without reference to this point 61 F.2d 944, certiorari denied 53 S.Ct. 404, 288 U.S. 613, 77 L.Ed. 986; U. S. v. Giger, D.C.Ark.1939, 26 F. Supp. 624.

This section must be liberally construed, especially in case involving rights of minor Indian wards. U. S. v. Johnson (C.C.A.Okl.1936) 87 F.2d 155.

This section does not cover debts for which federal government has supervision or control unless such supervision and control are direct. Id.

This section should be broadly interpreted in order to protect the government's revenue. U. S. v. Muntzing, D.C. W.Va.1946, 69 F.Supp. 503. See, also, In re Lane's Estate, Iowa 1953, 59 N.W. 2d 593.

This section creates no lien in favor of United States but affects priority only.

Petition of Gilbert Associates, N.H.1952, 90 A.2d 499, reversed on other grounds 73 S.Ct. 701, 345 U.S. 361, 97 L.Ed. —.

The rule, that the purpose of this section providing that debts due the United States shall be first satisfied in receivership proceeding is not to be defeated by unnecessarily restricting the application of the word "debts" within a narrow or technical meaning, does not mean that all claims of the United States shall be accorded priority in equity receiverships without regard to existing circumstances and in disregard of interrelated social legislation by federal and state governments which is designed to accomplish a common purpose. Rivard v. Bijou Furniture Co., 1941, 21 A.2d 563, 67 R.I. 251, opinion conformed to 27 A.2d 853.

This section should be liberally construed in favor of the United States. Rivard v. Bijou Furniture Co., 1941, 21 A.2d 563, 67 R.I. 251, opinion conformed to 27 A.2d 853, 68 R.I. 358.

Statute must be applied to carry out its obvious purpose and not given a narrow interpretation. Cooper v. Augusta Trust Co. (1935) 179 A. 295, 133 Me. 418.

In determining whether United States is a creditor, and therefore entitled to statutory priority, substance rather than form of transaction controls. Id.

2½. Purpose

The priority granted by this section to debts owed by insolvent persons to the United States was designed to secure an adequate public revenue. Nathanson v. N. L. R. B., Mass.1952, 73 S.Ct. 80, 344 U.S. 25, 97 L.Ed. —.

The purpose of this section giving priority to the United States in payment of claims against an insolvent debtor is to secure an adequate public revenue to sustain the public burden and this section must be construed liberally in order to effectuate that purpose. U. S. v. Emory, 1941, 62 S.Ct. 317, 314 U.S. 423, 86 L.Ed. 315, 48 Am.Bankr.Rep.N.S. 499.

The purpose of this section was to secure adequate revenue to sustain public burdens and to that end the statute must be construed liberally. In re Kuhn's Estate, 1941, 21 A.2d 513, 146 Pa.Super. 1.

2¾. Construction with other laws

Section 1601(a) (3) of Title 26 giving taxpayer right to take credit against federal unemployment compensation taxes up to 90 per cent for amount paid for state unemployment compensation taxes is not effective as an exception to, or a qualification of requirement of this section that debts due United States shall be first satisfied whenever debtor is insolvent. Com. of Mass. v. U. S., Mass. 1948, 68 S.Ct. 747, 333 U.S. 611, 92 L.Ed. 468.

This section is applicable to claim against deceased farmer's estate for emergency feed and crop loans, since there is no irreconcilable conflict between this section and Acts Feb. 23, 1934, 48 Stat. 354 and June 19, 1934, 48 Stat. 1056, authorizing emergency loans to distressed farmers. U. S. Dept. of Agriculture, Emergency Crop and Feed Loans v. Remund, S.D.1947, 67 S.Ct. 891, 330 U.S. 539, 91 L.Ed. 613.

Only the plainest inconsistency would warrant Supreme Court in finding an implied exception to this section giving priority to the United States in payment of claims against an insolvent debtor, and section 1701 et seq. of Title 12 is not inconsistent with this section and does not relinquish priority in favor of claims of the United States arising out of section 1701 et seq. of Title 12. U. S. v. Emory, 1941, 62 S.Ct. 317, 314 U.S. 423, 86 L.Ed. 315, 48 Am.Bankr.Rep.N.S. 499.

Provision of section 104 of Title 11 giving priority to wage claims over claims of the United States was not intended to eliminate statutory priority in favor of the United States in payment of claims against an insolvent debtor in state courts or in nonbankruptcy proceedings in federal courts. Id.

Where under I.C., § 15-607, administratrix could reject claim against estate without court approval and holder of rejected claim was required to bring suit in proper court against administratrix, by filing claim against estate of deceased veteran for amount of over-payments of disability compensation, United States did not submit itself to jurisdiction of state court and thereby limit action to be taken on rejection of claim. U. S. v. Gibson, D.C.Idaho 1951, 101 F.Supp. 225.

I.C., §§ 15-607, 15-609 providing that when claim is rejected, either by executor or administrator, or probate judge, holder must bring suit in proper court against executor or administrator within three months after notice of its rejection, if it be then due, or within two months after it becomes due, otherwise claim is forever barred, did not apply to rejected claim of United States against estate of deceased disabled veteran for over-payments of disability compensation made during veteran's lifetime. Id.

This section must be construed with section 3672 of Title 26 that lien for unpaid United States taxes is not valid against mortgagee, pledgee, purchaser, or judgment creditor until notice is filed by internal revenue collector. In re Meyer's Estate, 1946, 48 A.2d 210, 159 Pa. Super. 296.

In enacting section 3672 of Title 26 that lien for unpaid United States taxes is not valid against mortgagee, pledgee, purchaser, or judgment creditor until notice is filed by internal revenue collector, the intention of Congress was to modify this section. Id.

Where receivership proceedings against an insolvent tenant were not instituted under section 1 et seq. of Title 11, this section establishing priority for debts due to United States governed with respect to payment of claims of United States rather than section 104 of Title 11 respecting debts which have priority in payment in bankruptcy proceedings. Globe Solvents v. Nouskhajian, 1942, 25 A.2d 595, 148 Pa. Super. 209.

3. Operation and effect—In general

The effect of this section requiring that all debts due United States shall be first satisfied whenever debtor is insolvent depends on the fact of insolvency not the degree of it. Com. of Mass. v. U. S., Mass.1948, 68 S.Ct. 747, 333 U.S. 611.

The priority for debts due United States whenever debtor is insolvent under this section is absolute and once attaching it is final and conclusive. Id.

Only the plainest inconsistency would warrant court in finding an implied exception to operation of this section giving priority to debts due to United States whenever insolvent debtor makes a voluntary assignment of his property. People of State of Ill., ex rel. Gordon v. U. S., Ill.1946, 66 S.Ct. 841, 328 U.S. 8, 90 L.Ed. 1049. See, also, U. S. Dept. of Agriculture Emergency Crop and Feed Loans v. Remund, S.D.1947, 67 S.Ct. 891, 330 U.S. 539, 91 L.Ed. 613; Com. of Mass. v. U. S., Mass.1948, 68 S.Ct. 747, 333 U.S. 611, 92 L.Ed. 340.

Under this section giving United States priority against insolvent debtors, the court has no power to apply what it may deem equitable principles in the distribution of an estate when Congress has formulated the rule that must be applied. Com. of Mass. v. U. S., C.C.A.Mass.1947, 160 F.2d 614, affirmed 68 S.Ct. 747, 333 U. S. 611, 92 L.Ed. 340.

A claim against a bankrupt's estate based upon a debt owed by the bankrupt to the United States is entitled to priority. In re Miller, C.C.A.N.Y.1939, 105 F.2d 926.

In determining priority of federal income tax lien over state, county and city tax liens, where no distribution in insolvency proceeding was involved, this section was inapplicable. U. S. v. City of Greenville, C.C.A.S.C.1941, 118 F.2d 963.

Although, as between special and residuary legatees, special legatees may have priority, rights of creditors are always superior to rights of gratuitous donees, and, by express federal and state legislation, the United States Government is preferred above other creditors. U. S. v. Fisher, D.C.Mich.1944, 57 F.Supp. 410.

Under this section, right of priority of the United States arises at time of insolvency or act of bankruptcy and statute presupposes that debtor's assets have passed into hands of some administrative officer, agency, or third person for distribution among debtor's creditors. U. S. v. Woodside, D.C.S.C.1940, 34 F. Supp. 281, reversed on other grounds 118 F.2d 963.

This section giving to United States a prior lien for debts owing to United States by insolvent person or by person committing act of bankruptcy did not give United States priority in distribution of proceeds of sale of realty ordered in suit by United States to foreclose liens for unpaid income taxes, in absence of showing of insolvency or act of bankruptcy. Id.

This section providing that whenever any person indebted to the United States is insolvent, debts due to the United States shall be first satisfied does not create a lien in favor of the United States, but the United States is entitled to be paid first out of the proceeds of debtor's estate. Lerman v. Lincoln Novelty Co., 1941, 21 A.2d 827, 130 N.J.Eq. 144.

This section is applicable in receivership proceedings and not in bankruptcy cases, and hence federal claims are generally preferred in equity receiverships without regard to order of payment established by section 104 of Title 11 or state priority laws. Rivard v. Bijou Furniture Co., 1941, 21 A.2d 563, 67 R.I. 251, opinion conformed to 27 A.2d 853, 68 R.I. 358.

The right of the United States to its statutory priority in payment to the proceeds of the sale of a seat on the New York Stock Exchange which had been assigned by deceased debtor whose estate was insufficient to pay all the debts due from the estate arose at the moment of the death of the assignor, when ownership in deceased and in the membership of the Exchange passed to the administrator of his insolvent estate. In re Gruner, 1946, 68 N.E.2d 514, 295 N.Y. 510, 167 A.L.R. 628, reargument denied 69 N.E.2d 822, 296 N.Y. 668, 167 A.L.R. 628.

A "specific and perfected" state tax lien is one which definitely identifies the lienor, the amount of the lien, and the property to which it attaches. U. S. v. Carroll Const. Co.'s Receivership, Wash.1952, 249 P.2d 234.

Whatever rights the United States had under this section did not attach until receiver was appointed for insolvent corporation which was indebted to the United States. Ernst v. Guarantee Millwork, 1939, 93 P.2d 404, 200 Wash. 195.

Under this section the United States has priority in the payment of the debt of an insolvent. In re Dickson's Estate, 1938, 84 P.2d 661, 197 Wash. 145.

Where United States perfected lien against insolvent debtor for unpaid withholding and social security taxes on November 10, 1947, and sworn accounts and notices of mechanics' liens were not filed until December, United States had prior lien. Crutcher, Rolfs, Cummings, Inc., v. Big Three Welding Equipment Co., Tex.Civ.App.1949, 224 S.W.2d 884, reversed on other grounds 229 S.W.2d 600, 149 T. 204.

5. —— Local laws or rules as affecting priority

The priority of payment of debts due the United States is not destroyed by state recording acts any more than by state statutes creating or otherwise affecting liens, if the lien as recorded or otherwise executed does not have required degree of specificity and perfection, and test is not simply whether by his taking further steps lienor's rights will be enforced against others than the government. People of State of Ill. ex rel. Gordon v. Campbell, Ill.1946, 67 S.Ct. 340, 329 U.S. 362, 91 L.Ed. 348.

The effect and operation of a lien in relation to claim of priority by the United States under this section, is a federal question, and hence a state court's characterization of a lien as specific and perfected is not conclusive and is subject to re-examination by United States Supreme Court although the state characterization is entitled to weight. Id.

A city's lien for personal property taxes under Code Va.1936, §§ 5519, 5523, 5524, was not such a specific and perfected lien on date of taxpayer's assignment for benefit of creditors as to displace the priority given to debts due the United States, where no distraint was levied until after assignment was executed. U. S. v. Waddill, Holland & Flinn, 1945, 65 S.Ct. 304, 323 U.S. 353, 89 L.Ed. 294.

Claimants of wages from insolvent corporation which owed federal taxes and which had executed written assignment for benefit of creditors did not have, under provision of Code Civ.Proc. § 1204 constituting such claims liens, any specific and perfected lien at time Government's priority under this section arose, and, thus, they were not entitled to priority over Government under exceptions read into this section. U. S. v. Division of Labor Law Enforcement, Dept. of Indus. Relations, Cal., C.A.Cal.1953, 201 F.2d 857.

Where checks drawn on Treasurer of United States and payable through a Federal Reserve Bank to Tennessee payees were allegedly paid on forged indorsements of payees' names, an action by United States to recover amounts paid on checks from presenting banks which indorsed the checks, thereby guaranteeing all prior indorsements, was not barred by Tennessee six-year statute of limitations, Code 1932, § 8600, notwithstanding that action was not brought within six years after payment of checks by the government. U. S. v. Union Planters Nat. Bank & Trust Co., C.C.A. Tenn.1943, 134 F.2d 1016.

Under this section according preference to claims of the United States against an insolvent, a lien against bankrupt's realty for unpaid federal income taxes which was effected by filing an assessment on December 7, 1931, was entitled to priority over liens for Illinois State taxes for 1930 and 1931, the amount of which was not fixed by assessment until after federal lien had attached, notwithstanding state liens attached as inchoate liens prior to federal lien by virtue of Smith-Hurd Ann.St., ch. 120, § 238 making real estate taxes a prior lien from and after April 1, of the year in which taxes are levied until paid. U. S. v. Reese, C.C.A. Ill.1942, 131 F.2d 466, 51 Am.Bankr.Rep. N.S. 660.

Where Farm Credit Administration filed its claim for amount due on note of insolvent deceased to Secretary of Agriculture with commissioner of accounts, it subjected itself, under Code W.Va. 44-8-7 to jurisdiction of state tribunal and was bound by decision therein approving administrator's account allowing the claim only as a common claim notwithstanding this section giving priority to the United States in payment of claims against an insolvent debtor. U. S. v. Muntzing, D.C.W.Va.1946, 69 F.Supp. 503.

The priority given the United States by this section cannot be impaired or superseded by state law. In re Mitchell's Restaurant, 1949, 67 A.2d 64, 31 Del.Ch. 121.

The United States cannot under its sovereign power claim priority for unpaid income taxes over other claims against taxpayer, but can so claim only under act of Congress, and any priority granted by act of Congress cannot be impaired or displaced by state law. In re Meyer's Estate, 1946, 48 A.2d 210, 159 Pa.Super. 296.

This section giving priority to debts due United States in event of insolvency of debtor or assignment for benefit of his creditors cannot be impaired or superseded by state law. Spokane Merchants' Ass'n v. State, Wash.1942, 130 P.2d 373, 15 Wash.2d 186; People, for use of Murphy v. Chicago Waste & Textile Co., 1945, 62 N.E.2d 537, 391 Ill. 29, affirmed 66 S.Ct. 841, 328 U.S. 8, 90 L.Ed. 1049, affirmed 67 S.Ct. 340, 329 U.S. 362, 91 L.Ed. 348.

This section must prevail over state law. Barnett v. American Surety Co. of New York (C. C. A. Okl. 1935) 77 F.(2d) 225.

Under Oklahoma statute entitling surety which paid depository bond securing deposits of state, county, municipal or "other public funds" in failed bank to participate in pro rata division of assets of bank, "other public funds" must be restricted to funds ejusdem generis, and does not apply to depository bonds securing United States funds. Id.

Right of United States to priority of its debts in case of insolvency cannot be governed by state laws. U. S. ex rel. Ray v. Porter (D. C. Idaho, 1927) 24 F.(2d) 139.

Priority of United States to payment of claim cannot be subordinated to priority claims of bank depositors under state law. U. S. v. Bliss (D. C. Neb. 1930) 40 F.(2d) 935, affirmed without reference to this point 44 F.2d 909.

In state insolvency proceeding, the United States has an absolute priority for debts due it, unlimited by state law. In re General Assignment for Benefit of Creditors of Payone Textile Corp., 1950, 96 N.Y.S.2d 765, 276 App.Div. 596, reversed on other grounds 97 N.E.2d 755, 302 N.Y. 206, affirmed 72 S.Ct. 357, 342 U.S. 912, 96 L.Ed. 682.

State law giving preference to wages due at time of assignment for benefit of creditors cannot apply to debts due United States if such law is inconsistent with this section. Kupshire Coats v. U. S. (1936) 5 N.E.2d 715, 272 N.Y. 221.

Right of United States to priority in payment of debts due it by insolvent estate cannot be impaired by state law. State ex rel. Sorensen v. Thurston State Bank (Neb.1931) 237 N.W. 293, 121 Neb. 407.

Priority of United States' claim against insolvent state bank's assets cannot be impaired or superseded by state law. U. S. v. State Bank of Musselshell, Mont. (D. C. Mont. 1932) 60 F.(2d) 157.

Where notice of state tax lien, which was filed with county auditor by director of state employment security department, set forth the particular articles of personal property against which lien was claimed, stated amount of lien, and named company against which it was filed, such lien was "specific and perfected", and, therefore, was prior to federal tax lien which attached three days prior to time notice of state lien was filed. U. S. v. Carroll Const. Co.'s Receivership, Wash. 1952, 249 P.2d 234.

The priority given to the United States by this section cannot be impaired or superseded by state law. In re Dickson's Estate, 1938, 84 P.2d 661, 197 Wash. 145.

This section giving United States priority of payment for debts due it from an insolvent cannot be set aside by state legislation. Leggett v. Southeastern People's College, 1951, 68 S.E.2d 263, 234 N. C. 595.

Where debtor has not sufficient property to pay off his debts and has made a voluntary assignment thereof, state statutes fixing procedure for establishing lien for state taxes, do not affect priority rights of United States under this section fixing status and priority of debts due United States. State v. Woodroof, 1950, 46 So.2d 553, 253 Ala. 620.

6. —— Priority in suits in equity

Where, at request of state of Illinois seeking to enforce against taxpayer a statutory lien for unemployment compensation contributions due the state, receiver was appointed and placed in control of assets of taxpayer, assets were liquidated, and at least one party other than the state, the United States, was allowed to intervene, and was heard, proceeding would be treated as a general equity receivership within scope of this section, which includes the appointment of a receiver for insolvent debtor. People of State of Ill. ex rel. Gordon v. Campbell, Ill.1946, 67 S.Ct. 340, 329 U.S. 362, 91 L.Ed. 348.

In equity receivership, nonlien tax claims of United States, arising before appointment of receiver, have priority over all other competing claims of a similar character, in view of this section. Rivard v. Bijou Furniture Co., 1941, 21 A.2d 563, 67 R.I. 251, opinion conformed to 21 A.2d 853, 68 R.I. 358.

In corporation receivership proceeding, United States held not entitled to priority on income tax claim under statute respecting debts due United States. Clough v. Superior Equipment Corporation (1931) 157 A. 306, 18 Del. Ch. 202.

The affirmance of the U. S. Supreme Court noted under the last two paragraphs in the original annotation was without reference to the holding set out in those paragraphs, and does not imply any affirmance of those holdings. See in this connection the last two paragraphs of note 12 in the original annotation under this section. [Editorial note.]

Whether lien created by state statute is sufficiently specific and perfected to raise questions as to applicability of priority given claims of United States against insolvent debtors by this section is matter of federal law for determination by federal courts, and state court's characterization of lien as specific and perfected cannot, by itself, impair or supersede congressional declaration of priority of claims of United States. U. S. v. Scott & Gregg Real Estate Co., Tex. Civ.App.1950, 229 S.W.2d 888.

7. —— Effect as creating lien on debtor's property

To same effect as first paragraph of original annotation, see Fidelity & Deposit Co. of Md. v. Lovell, D.C.Miss.1952, 108 F.Supp. 360.

To same effect as first paragraph of original annotation, see In re Gruner, 1946, 68 N.E.2d 514, 295 N.Y. 510, 167 A.L.R. 628, reargument denied 69 N.E.2d 822, 296 N.Y. 668, 167 A.L.R. 628.

The government's right to preference or priority in payment of debts due it is purely statutory, and does not arise until there is a legal and known insolvency manifested by some notorious act by the debtor pursuant to law, and the right to preference does not create a lien in favor of government. Seaboard Sur. Co. v. U. S., 1946, 67 F.Supp. 969, 107 Ct.Cl. 34, certiorari denied 67 S.Ct. 863, 330 U.S. 826, 91 L.Ed. 1275.

This section does not create a lien, but merely gives priority to claims of the United States after legal title has passed from debtor. U. S. v. Giger, D.C.Ark. 1939, 26 F.Supp. 624.

This section providing that whenever any person indebted to United States is insolvent, the debts due United States shall be first satisfied, creates a right to prior payments out of assets of an insolvent and not a lien against his property, and assessment, registration or sequestration by levy is not required. Leggett v. Southeastern People's College, 1951, 68 S.E.2d 263, 234 N.C. 595.

When insolvency of a debtor company was established, this section giving debts due the United States priority over all other debts applied, but did not give the United States a lien. Sturgill v. Lovell Lumber Co., W.Va.1951, 67 S.E.2d 321.

This section granting priority to debts due United States creates no lien upon debtor's property but merely confers priority of payment out of such property in hands of debtor's assignees or their representatives. U. S. v. Waddill, Holland & Flinn, 1944, 28 S.E.2d 741, 182 Va. 351, reversed on other grounds 65 S.Ct. 304, 323 U.S. 353, 89 L.Ed. 294.

8. Matters creating priority in general

This section regarding priority of claims of the United States covers the case of an insolvent debtor who has committed an act of bankruptcy. U. S. v. State of Texas, 1941, 62 S.Ct. 350, 314 U.S. 480, 86 L.Ed. 356, 48 Am.Bankr.Rep.N.S. 514.

The statutory priority of the United States for debts due it from certain classes of debtors is not created by the birth of the claim of the United States but is the result of an act of bankruptcy or insolvency, or an assignment for benefit of creditors, acting upon an existing claim of the United States. Engleman v. Commodity Credit Corp., D.C.Cal.1952, 107 F.Supp. 930.

This section, giving priority to the United States for debts due it from certain classes of debtors, by its terms, does not apply where the United States acquires its claim after an assignment for the benefit of creditors. Id.

The criteria for determining whether a mortgage, judgment or other lien is specific and perfected, so as to be entitled to a priority in payment by receiver of estate of an insolvent debtor are the identity of lienor; amount of lien; property to which it attaches, of or upon which there must be a levy, seizure, distraint or other statutory proceeding to divest or set it apart from property of debtor. Bank of Wrangell v. Alaska Asiatic Lumber Mills, D.C.Alaska 1949, 84 F.Supp. 1.

Priority should not be given bank deposit as representing "debt due United States" to prejudice of innocent depositors unless bank officials knew that funds deposited were government or restricted funds subject to government control. U. S. v. Barnett (D. C. Okl. 1934) 7 F. Supp. 573.

Under this section, where debts were assigned to the United States prior to time debtor made general assignment for benefit of creditors, the United States was entitled to priority of payment of its claims over claims of city of New York for sales and business taxes, since priority results merely from insolvency of debtor and ownership of claim by the United States. In re Long Island Sash & Door Corporation, 1940, 20 N.Y.S.2d 573, 259 App.Div. 688, affirmed 31 N.E.2d 48, 284 N.Y. 713, certiorari denied 61 S.Ct. 732, 312 U.S. 696, 85 L.Ed. 1131.

This section providing that debts due United States from an insolvent person shall be first satisfied does not create a lien on insolvent's property in favor of United States, but merely confers thereon a right of priority in payment of debt out of such property in receiver's hands. National Sur. Corp., York Mills v. Sharpe, N.C.1952, 72 S.E.2d 109.

9. Insolvency of debtor—In general

Where town's tax lien and federal tax lien were both general, and taxpayer was insolvent, federal lien had priority. U. S. v. Gilbert Associates, Inc., 1953, 73 S.Ct. 701.

Claim of United States against fleet of tugs and barges operated by coal transport company, for taxes and for damage done by one of tugs to channel buoy, held entitled to priority over other general claims, where corporation was apparently insolvent and consented to appointment of receivers, but claims of government did not have priority over claims of chattel mortgagees. North River Coal & Wharf Co. v. McWilliams Bros., Inc. (D. C. N. Y. 1929) 32 F.(2d) 355.

This section does not give priority to a tax lien created by sections 1560–1567 of title 26 in the absence of insolvency of the taxpayer. City of Winston-Salem v. Powell Paving Co. of North Carolina (D. C. N. C. 1934) 7 F. Supp. 424.

Claim of United States for taxes due from corporation in receivership held entitled to priority where corporation was solvent at time of receiver's appointment but became insolvent some six years thereafter. Hatch v. Morosco Holding Co., Inc. (C. C. A. N. Y. 1932) 61 F.(2d) 944, certiorari denied 53 S.Ct. 404, 288 U. S. 613, 77 L.Ed. 986.

The United States is given priority when debts are due to it by an insolvent to protect the credit and finances of the United States. In re Wilson, D.C.Tex. 1938, 23 F.Supp. 236.

United States, as depositor in trust company taken over by commissioner of banking, held not entitled to preferred claim, in absence of showing of insolvency. U. S. v. Singac Trust Co. (1933) 164 A. 702, 112 N. J. L. 448.

Under this section, a showing is required in each case that debtor has insufficient assets to pay all his debts, and that he has made a voluntary assignment thereof or committed an act of bankruptcy. People v. Biscailuz, 1950, 213 P. 2d 753, 95 Cal.App.2d 635.

Under this section which in effect provides that whenever any person indebted to the United States is insolvent, the debts due to the United States shall be first satisfied, the priority of payment in favor of the government does not arise unless the debtor is insolvent. Bishop v. Black, N.C.1951, 64 S.E.2d 167.

Where there was no proof of debtor's insolvency and suit did not involve all property of debtor but sought only determination of liens as to property sold to debtor under conditional sales contract, this section giving United States priority in insolvency cases was inapplicable. Tildesley Coal Co. v. American Fuel Corp., W.Va.1947, 45 S.E.2d 750, 130 W.Va. 720.

This section is to be construed liberally, and taking possession of debtor's property by a state receiver is equivalent of an assignment and is in itself an "act of bankruptcy" so as to be

brought within the statute. Emory v. St. James Distillery, Mo.App.1940, 143 S.W.2d 318, reversed on other grounds 62 S.Ct. 317, 314 U.S. 423, 86 L.Ed. 315.

10. —— What constitutes insolvency

Surety company undergoing receivership and liquidation because of its insolvency had become "insolvent" within statute. U. S. v. Knott (Fla.1936) 56 S.Ct. 902, 298 U.S. 544, 80 L.Ed. 1321, 104 A.L.R. 741.

Term "insolvency", within this chapter means an insufficiency of assets. U. S. v. Press Wireless, C.A.N.Y.1951, 187 F.2d 294.

In proceeding to reorganize corporate debtor under Bankruptcy Act, section 1 et seq. of Title 11, where corporate debtor's assets were not insufficient to pay all of his debts, debtor was not "insolvent" and United States was not entitled to priority in payment of a claim. Id.

Shipowner, though not having sufficient resources to meet its debts, was not "insolvent" within meaning of this section giving priority to debts due the United States in cases of insolvency in absence of showing voluntary assignment of property by shipowner or that it had committed an act of bankruptcy or that its property was attached by process of law, and, hence, absolute priority given to Government by this section did not apply to Government's lien for taxes. U. S. v. The Pomare, D.C. Hawaii 1950, 92 F.Supp. 185.

Under this section giving United States priority where debtor is insolvent, insolvency must be a formal one evidenced by bankruptcy, receivership, or assignment for benefit of creditors where debtor is living. Maryland Casualty Co. v. U. S., Ct.Cl.1944, 53 F.Supp. 436.

Word "insolvent," as used in statute, giving United States priority as to claims against insolvent debtor, means only that insolvency contemplated by the Bankruptcy Act, as distinguished from technical, or common-law, insolvency. Decker v. Decker Bldg. Material Co. (1935) 178 A. 196, 118 N. J. Eq. 177

Under this section, "insolvency" requires that there shall be an insolvent debtor not having sufficient property to pay all his debts. People v. Biscailuz, 1950, 213 P.2d 753, 95 Cal.App.2d 635.

Under this section providing that whenever any person indebted to the United States is insolvent, the debts due the United States shall be first satisfied, United States has no right to priority of payment however insolvent the debtor may be until or unless debtor is divested of possession of his property for purpose of liquidation, notwithstanding that this section merely uses the word "insolvent". Leggett v. Southeastern People's College, 1951, 68 S.E.2d 263, 234 N. C. 595.

Where a receiver is appointed and debtor's assets, when liquidated, are insufficient to satisfy the claims of contesting creditors, the insolvency of the debtor within this section is clearly demonstrated. Bishop v. Black, N.C.1951, 64 S.E.2d 167.

The provisions of this section are applicable in the case of a living debtor only where his insolvency is a formal one, evidenced by a bankruptcy, receivership or assignment for the benefit of creditors. Maryland Casualty Co. v. U. S., 1944, 100 Ct.Cl. 513.

11. —— Voluntary assignment by insolvent debtor in general

A "voluntary assignment" is a transfer without compulsion of law by a debtor of his property to an assignee in trust to apply the same, or the proceeds thereof, to the payment of his debts and to return the surplus, if any, to the debtor. U. S. v. Gotwals, C.C.A.Okl. 1946, 156 F.2d 692, 169 A.L.R. 619, certiorari denied 67 S.Ct. 204, 329 U.S. 781, 91 L.Ed. 670.

Congress having made the assignment for the benefit of creditors one of the means by which priority of Government claim is created, the same assignment should be equally effective for other purposes particularly for purpose of transferring legal title to the property of the debtor to the assignee for the benefit of creditors. Engleman v. Commodity Credit Corp., D.C.Cal.1952, 107 F.Supp. 930.

On issue of priority of income tax claim, where action was instituted for appointment of receiver and defendant, by answering and joining in prayer of complaint, co-operated with plaintiff to secure appointment of receiver to whom defendant immediately handed over possession and control of all its property and business, the defendant in effect, made a "voluntary assignment" of its property within meaning of this section giving priority to claims of the United States when debtor having insufficient property to pay debts makes voluntary assignment of property. Foulke v. C. Pardee Works, D.C.N.J.1940, 35 F.Supp. 734.

On voluntary assignment for benefit of creditors under state law, all claims of United States held to have preference under this section over all other claims, including wages, since section 104 of Title 11 regulating priority applies only to bankruptcy cases and to proceedings in bankruptcy court or coming within its jurisdiction. Kupshire Coats v. U. S. (1936) 5 N.E.2d 715, 272 N.Y. 221.

Mandate of this section that upon voluntary assignment of insolvent debtor debt due to United States shall first be satisfied is absolute so long as property has not been divested out of debtor before right of preference of United States accrues. In re Lincoln Chair & Novelty Co., 1937, 9 N.E.2d 7, 274 N.Y. 353.

12. —— Acts which constitute an assignment

Where defendant who is in fact insolvent files an answer joining in prayer for receivership, there is in substance a "voluntary assignment" within meaning of this section. People of New York v. U. S., C.C.A.Del.1939, 106 F.2d 210.

Where only part of corporation's property passed to receivers there was no "general assignment," and government was not entitled to priority for taxes. Manhattan Rubber Mfg. Co. v. Lucey Mfg. Corporation (D. C. N. Y. 1928) 26 F.(2d) 839.

Insolvent banks, surrendering assets to bank commissioner, made assignment and committed bankruptcy, within statute giving priority to claims of United States. Mothersead v. U. S. Fidelity & Guaranty Co. (C. C. A. Okl. 1927) 22 F.2d 644, certiorari denied 48 S.Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. New Amsterdam Casualty Co., C.C.A.Okl. 1927, 22 F.2d 654, certiorari denied 48 S. Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. Fidelity & Deposit Co. of Maryland, C.C.A.Okl.1927, 22 F.2d 654, certiorari denied 48 S.Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. Fidelity & Casualty Co. of New York, C.C.A.Okl. 1927, 22 F.2d 654, certiorari denied 48 S. Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. American Surety Co. of New York, C.C.A.Okl.1927, 22 F.2d 655, certiorari denied 48 S.Ct. 421, 276 U.S. 637, 72 L.Ed. 744.

A voluntary or consent receivership on ground of insolvency is a "voluntary assignment" of the debtor's property within meaning of this section. In re

Mitchell's Restaurant, Del.Ch.1949, 67 A. 2d 64, 31 Del.Ch. 121.

16¼. —— Time priority attaches

Under this section, which includes the voluntary or involuntary permission of appointment of a receiver, the priority of the United States attaches upon appointment of the receiver. People of State of Ill. ex rel. Gordon v. Campbell, Ill.1946, 67 S.Ct. 340, 329 U.S. 362, 91 L. Ed. 348.

Under this section giving priority to debts due United States in event of insolvency of debtor, or assignment for benefit of his creditors, the priority created is effective as of date of assignment of assets of debtor. Spokane Merchants' Ass'n v. State, 1942, 130 P.2d 373, 15 Wash.2d 186.

Under this section, which in effect provides that whenever any person indebted to the United States is insolvent, the debts due to the United States shall be first satisfied, the priority of the United States attaches upon appointment of a voluntary or involuntary receiver, or upon the date of debtor's assignment for the benefit of creditors. Bishop v. Black, N.C.1951, 64 S.E.2d 167.

The alleged right of the United States to priority for a debt became fixed at date of debtor's assignment for benefit of creditors. U. S. v. Waddill, Holland & Flinn, 1944, 28 S.E.2d 741, 182 Va. 351, reversed on other grounds 65 S.Ct. 304, 323 U.S. 353, 89 L.Ed. 294.

16½. —— Consent to receivership

Debtor's consent to receivership constitutes legal equivalent of voluntary assignment within statute giving priority to debts. Hatch v. Morosco Holding Co., Inc., D.C.N.Y.1932, 56 F.2d 640, affirmed without reference to this point 61 F.2d 944, certiorari denied 53 S.Ct. 404, 288 U.S. 613, 77 L.Ed. 986.

Where debtor consented to receivership, and, though solvent at time of commencement of proceedings, subsequently became insolvent, government held entitled to priority of payment of claim for taxes. Id.

Consent decree wherein receivers were appointed for insolvent corporation held to have effect of general assignment. People of State of New York v. Maclay (N. Y. 1933) 53 S. Ct. 323, 288 U. S. 290, 77 L.Ed. 754. See, also, Leggett v. Southeastern People's College, 1951, 68 S.E.2d 263, 234 N.C. 595.

Claimant, if not preferred at time of appointment of receivers for insolvent corporation, could not obtain preference by anything done thereafter. People of State of New York v. Maclay, N.Y.1933, 53 S.Ct. 323, 288 U.S. 290, 77 L.Ed. 754.

17. Bankruptcy of debtor—In general

Where maker of note, insured under chapter 13 of title 12, defaulted prior to filing of maker's bankruptcy petition, but Federal Housing Administrator did not pay insured payee and acquire assignment of note in name of United States until after maker had been adjudicated bankrupt, claim of United States based on the note was not entitled to priority over claims of other creditors. U. S. v. Marxen, Cal.1939, 59 S.Ct. 811, 307 U.S. 200, 83 L.Ed. 1222.

This section providing that in case of insolvency of any person indebted to United States the debts due to United States shall be first satisfied does not apply in bankruptcy cases. In re Taylorcraft Aviation Corp., C.C.A.Ohio 1948, 168 F.2d 808. See, also, Adams v. O'Malley, C.A.Neb.1950, 182 F.2d 925.

Provision of section 104 of Title 11 designating debts which have priority, does not defeat the priority for claims of the United States in nonbankruptcy proceedings, but that provision would eliminate such priority, in bankruptcy proceedings when inconsistent with said section. U. S. v. Sampsell, C.C.A.Cal.1946, 153 F.2d 731.

A claim against bankrupt acquired by Federal Housing Administrator by assignment from a private institution after commencement of bankruptcy proceeding was not entitled to priority of payment as a debt due "United States." In re Hansen Bakeries, C.C.A.N.J.1939, 103 F.2d 665, 40 Am.Bankr.Rep.N.S. 71.

Under this section a surety which had discharged liability to United States under bond to secure payment of federal income tax was not entitled to status of priority against estate of bankrupt taxpayer in same class as claims of United States for taxes for other years. In re Newman, C.C.A.Ill.1938, 101 F.2d 660, 39 Am.Bankr.Rep.N.S. 145, certiorari denied 61 S.Ct. 957, 313 U.S. 570, 85 L.Ed. 1528, rehearing denied 61 S.Ct. 1108, 313 U.S. 600, 85 L.Ed. 1552.

This section does not apply in bankruptcy proceedings. In re Knox-Powell-Stockton Co., C.C.A.Cal.1939, 100 F.2d 979, 38 Am.Bankr.Rep.N.S. 766.

Under provision of section 104 of Title 11 and this section giving preference to claims of the "United States," Federal Housing Administrator was not entitled to preference as respects claim against bankrupt's estate by Administrator, who insured payee bank against loss on note, and presented note, following assignment, under provisions of National Housing Act, sections 1702 et seq. Federal Housing Adm'r v. Moore (C.C.A.Cal.1937) 90 F. (2d) 32.

Federal government claiming priority over bankrupt's other creditors in payment of taxes must look to Bankruptcy Act and not to general statute giving priority to debts owed United States by insolvent or deceased debtor. U. S. Fidelity & Guaranty Co. v. Sweeney (C.C.A. Mo 1935) 80 F.(2d) 235

Statute fixing priority of claims of United States held superseded by Bankruptcy Act in cases of bankruptcy. Claude D. Reese, Inc. v. U. S. ex rel. Collector of Internal Revenue (C. C. A. Fla. 1935) 75 F.(2d) 9.

Federal government has priority over creditors of bankrupt in matter of claim for income tax. In re Hereford Oil Co. (D. C. Tex. 1930) 43 F.(2d) 997.

Where contractor with the United States was adjudicated a bankrupt before the surety took up performance of the contract, the United States had a statutory preference in the assets of the contractor and its priority defeated the equity of the contractor's surety in percentages retained under the contract with the United States. Standard Acc. Ins. Co. v. U. S., 1951, 97 F.Supp. 829, 119 Ct.Cl. 749.

This section providing that whenever any person indebted to the United States is insolvent, debts due the United States shall be first satisfied, has no application in bankruptcy proceedings, as distinguished from other methods of liquidation, even in the distribution of free money, the Bankruptcy Act, section 104, sub. a(4, 5) of Title 11, being exclusive in that regard. In re Taylorcraft Aviation Corp., D.C.Ohio 1948, 76 F.Supp. 81, affirmed 168 F.2d 808.

This section giving debts due the United States priority over other claims against insolvent debtors, or against estate of any deceased debtor in hands of executor or administrator, does not apply to distributions in bankruptcy or to questions of priority in cases where no judicial administration of an insolvent estate is being made. American Sur. Co. of N. Y. v. City of Louisville Municipal Housing Commission, D.C.Ky.1945, 63 F. Supp. 486, affirmed 160 F.2d 977.

This section gives priority to valid claims of the United States under section 104 (a) (5) of Title 11. In re Waxaid Co., D.C.Md.1943, 55 F.Supp. 289, 55 Am.Bankr. Rep.N.S. 563, 56 Am.Bankr.Rep.N.S. 236.

This section is not applicable to proceedings in bankruptcy, since it yields to the distribution scheme set forth in section 104 of Title 11. In re Van Winkle, D.C.Ky.1943, 49 F.Supp. 711, 53 Am. Bankr. Rep.N.S. 296; U. S. v. Sampsell, C.C.A.Cal.1946, 153 F.2d 731.

This section does not apply in bankruptcy, and in such proceedings debts due United States are governed by section 104 of Title 11. In re L. E. Elliott Brokerage Co., D.C.Kan.1942, 48 F.Supp. 144, 49 Am.Bankr.Rep.N.S. 616.

Title 11, § 104, giving wages priority over taxes held not to modify this section, and hence government's claim for taxes took priority over wage claims against clothing manufacturer making such assignment under state law. Kupshire Coats v. U. S. (1936) 5 N.E.(2d) 715, 272 N.Y. 221.

18. —— Acts of bankruptcy

Where taxpayer was insolvent at time of appointment of receiver, taxpayer committed an act of bankruptcy within this section by permitting the appointment of a receiver and hence the United States had benefit of priority given it for federal insurance contribution taxes. People of State of Ill. ex rel. Gordon v. Campbell, Ill.1946, 67 S.Ct. 340, 329 U.S. 362, 91 L.Ed. 348.

The appointment of a receiver to liquidate the assets of an insolvent corporation which was indebted to the United States constituted an "act of bankruptcy" within this section giving priority to the United States in payment of claims against an insolvent debtor. U. S. v. Emory, 1941, 62 S.Ct. 317, 314 U.S. 423, 86 L.Ed. 315, 48 Am.Bankr.Rep.N.S. 499.

Payee's loan of $40,000 to maker and receipt of $60,000 note which included $20,000 existing indebtedness, was not act of bankruptcy of payee and written agreements between maker and payee that maker could offset against amount due on note any sums paid by maker pursuant to maker's indorsement of payee's indebtedness to bank did not constitute preference and maker was not thereby created a trustee for United States seeking to enforce lien against note for unpaid taxes of payee, where payee was not insolvent on dates of written agreements and agreements were in ordinary course of business. U. S. v. Winnett, C.C.A.Cal.1947, 165 F.2d 149.

State supervisor of banking in taking possession of bank's assets for liquidation committed "act of bankruptcy," entitling government to priority. Adams v. U. S. (C. C. A. Wash. 1928) 24 F.(2d) 907.

Debtor's consent to receivership does not constitute act of bankruptcy within statute giving priority to debts due United States. Hatch v. Morosco Holding Co., Inc., D.C.N.Y.1932, 56 F.2d 640, affirmed 61 F.2d 944, certiorari denied 53 S.Ct. 404, 288 U.S. 613, 77 L.Ed. 986.

Act of bankruptcy held shown, where bank was administered by state officer, directors and stockholders acquiescing. U. S. ex rel. Ray v. Porter (D. C. Idaho, 1926) 24 F.(2d) 709.

Closing of bank by majority of directors and liquidation by state officer held an "act of bankruptcy." U. S. ex rel. Ray v. Porter, D.C.Idaho 1927, 24 F.2d 139

Where debtor in involuntary bankruptcy proceeding filed answer consenting to adjudication as a bankrupt, such conduct was in effect a "voluntary assignment" and an "act of bankruptcy" constituting grounds under this section for giving priority to debts due United States. In re Waxaid Co., D.C.Md.1943, 55 F. Supp. 289, 55 Am.Bankr.Rep.N.S. 563, 56 Am.Bankr.Rep.N.S. 236.

As against unsecured creditors opposing claim of United States to priority in bankruptcy proceeding, United States was not bound to submit affirmative evidence of an act of bankruptcy, which was established by the proceedings and constituted the basis for its continuance. Id.

While a state bank may not be put in bankruptcy by the federal act, yet it may commit an act of bankruptcy in the contemplation of this, so as to subject it to priorities in favor of claims of the United States. State ex rel. Sorensen v. Thurston State Bank (1931) 237 N. W. 293, 121 Neb. 407.

Admissions in statement signed by bank directors, considered with fact of actual insolvency, constituted "voluntary assignment" of bank's property and an act of bankruptcy, giving government priority as to postal funds. Bliss v. U. S. (C.C.A.Neb.1930) 44 F.2d 909.

Under this section, debts due United States from an insolvent must be first satisfied by receiver in charge of insolvent's property, as putting of receiver in charge of such property constitutes an act of bankruptcy. National Sur. Corp., York Mills v. Sharpe, N.C.1952, 72 S.E.2d 109.

Appointment of receiver, taking charge of insolvent debtor's estate, was act of bankruptcy under section 11 of Title 11, entitling United States to priority of payment of its claims against debtor for federal income, withholding, employment, and insurance contributions taxes. U. S. v. Scott & Gregg Real Estate Co., Tex. Civ.App.1950, 229 S.W.2d 888.

This section is to be construed liberally, and taking possession of debtor's property by a state receiver is equivalent of an assignment and is in itself an "act of bankruptcy" so as to be brought within the statute. Emory v. St. James Distillery, Mo.App.1940, 143 S. W.2d 318, reversed on other grounds 62 S.Ct. 317, 314 U.S. 423, 86 L.Ed. 315.

22. Debtors to which priority applies

This section deals entirely with living insolvent persons and deceased debtors whose estates are insufficient to pay debts due from the deceased. U. S. v. Giger, D.C.Ark.1939, 26 F.Supp. 624.

United States had preferred claim for any sums due from insolvent state bank taken over by state bank commissioner for liquidation. Markham v. Barnett (1936) 54 P.(2d) 1021, 176 Okl. 240.

Where postmaster had carried for some five years certified checks as security for payment of postage by publishers, and, upon failure of certifying banks, had received all that publishers owed, and thereafter had exacted cash deposits from publishers, as required by law, to cover mailing charges, postmaster, filing claim for benefit of publishers, held not entitled to preferred claim against banks under statute, since insolvent banks were not indebted to United States. Cooper v. Augusta Trust Co (1935) 179 A. 295, 133 Me. 418.

23. Debts to which priority applicable

See also annotations under section 104 of title 11.

Under this section requiring that debts due United States shall be first satisfied whenever debtor is insolvent, whether obligations wholly contingent for ultimate maturity and obligation upon happening of events after insolvency fall within reach of debts due at time of insolvency is doubtful. Com. of Mass. v. U. S., Mass.1948, 68 S.Ct. 747, 333 U.S. 611.

Under this section requiring that debts due United States shall be first satisfied whenever debtor is insolvent, the government has prior and indefeasible right to take fund available, up to amount necessary to pay its claim as of date priority attaches, and such right may not be affected by later contingencies other than payment. Id.

Under this section, priority does not depend on how the United States acquires title to claim, or on status of claim prior to its transfer to the United States. Wagner v. McDonald, C.C.A.Mo. 1938, 96 F.2d 273.

Claims assigned to the United States after an assignment for the benefit of creditors stand in same position as debt assigned to the United States after the filing of a petition in bankruptcy and, therefore, are not entitled to the statutory priority of the United States for debts due it from certain classes of debtors. Engleman v. Commodity Credit Corp., D.C.Cal.1952, 107 F.Supp. 930.

Amount owing on note payable to the Secretary of Agriculture was a "claim by the United States" within meaning of this section giving priority to the United States in the payment of claims against an insolvent debtor. U. S. v. Muntzing, D.C.W.Va.1946, 69 F.Supp. 503.

Word "debts," as used in statute, giving United States priority for debts due it against estate of insolvent debtor, includes taxes. Decker v. Decker Bldg. Material Co. (1935) 178 A. 196, 118 N. J. Eq. 177.

Under this section the word "debts" includes taxes, penalties, and interest. In re Assignment of Benefit of Creditors of T. J. Simpson, Inc., 1939, 15 N.Y.S.2d 1021, 258 App.Div. 148.

Judgment is a "debt" within this section. Brumer v. U. S., 1948, 34 N.W.2d 325, 252 Wis. 425.

Claims against insolvent bank for amount of deposits of funds belonging to bankrupt estates, secured by bonds naming United States as obligee, held not entitled to priority as debts due the United States. Andrew v. Crawford County State Bank of Denison (Iowa, 1929) 224 N. W. 499, 208 Iowa 248, certiorari denied 50 S. Ct. 239, 281 U.S. 725, 74 L.Ed. 1142.

Claims of sureties for amounts paid in discharge of liability on bonds securing deposits of bankrupt estates held not entitled to preference on depository's insolvency as "debts due to the United States." Florida Bank & Trust Co. of West Palm Beach v. Union Indemnity Co. (C. C. A. Fla.1932) 55 F.2d 640, certiorari denied 53 S.Ct. 6, 287 U.S. 600, 77 L.Ed. 522.

That statutory bonds required of depository for money of bankrupt estate ran to the United States did not make debts thereby secured "debts due to the United States" entitled to preference on depository's insolvency. Id.

Ordinarily, debts due on judgments recovered by United States are "debts due to the United States" within priority statute. U. S. v. Knott (Fla.1936) 56 S. Ct. 902, 298 U.S. 544, 80 L.Ed. 1321, 104 A.L.R. 741.

Previous inchoate lien will not defeat priority of United States for debts due from insolvent. Id.

This section giving priority to debts due to United States by an insolvent person did not entitle United States to priority in proceedings for compositions, where debtors at time of filing petitions were not indebted to United States on claims filed by it for allowance in the proceedings. In re Stanbrough, D.C. Iowa 1938, 23 F.Supp. 976.

This section must be so read as to include whatever debts are owed the United States as a constitutional creditor. In re Wilson, D.C.Tex.1938, 23 F. Supp. 236.

Bank deposit of government funds is entitled to priority in liquidation of failed national bank, even though bank officials are without knowledge of governmental character of deposit. U. S. v. Johnson (D. C.Okl.1935) 11 F.Supp. 897, affirmed 87 F.2d 155.

Guardian of Osage Indian to whom funds had been disbursed illegally by administrator of deceased Indian allottee held not a government agent so as to entitle funds to priority on insolvency of bank in which deposited as a "debt due United States," since guardian was not subject to control of federal government, in that guardian's position was not analogous with that of superintendent of Indian tribe who is a federal agent. Id.

Deposit of funds in bank by guardian of Osage Indian to whom funds had been disbursed illegally by administrator of deceased Indian allottee held not entitled to priority on insolvency of bank as a "debt due United States," where funds were not treated as government funds, in that no bonds were given to secure repayment of deposits and funds were not subject to withdrawal by federal government or other officials of the Indian Agency. Id.

Illegally disbursed funds by Osage Agency to administrator of deceased Osage allottee, deposited in bank which later became insolvent, is not "debt" due United States entitled to priority in payment. Id.

The fact that a debt assigned to the United States was originally a private debt was not material as respects question of priority under statute according priority to debts due United States government, where debtor is insolvent. In re Dickson's Estate, 1938, 84 P.2d 661, 197 Wash. 145.

Under this section priority extends to all classes of debts due the United States. Id.

Under this section providing that whenever any person indebted to United States is insolvent, the debts due United States shall be first satisfied, phrase "debts due" does not connote a debt past due or in default, but simply means debts owed or owing, that which one contracts or is under legal obligation to pay, a legal charge, fee, toll, tribute or the like, and a state of indebtedness. Leggett v. Southeastern People's College, 1951, 68 S.E.2d 263, 234 N.C. 595.

United States does not own, and has no pecuniary interest in, bankrupt estate's funds in trustee's hands, as regards right of priority for deposit in insolvent bank. Hartford Accident & Indemnity Co. v. Green (1931) 134 So. 487, 223 Ala. 96.

Insolvent banks wherein receivership funds were deposited by receiver appointed by federal court held not "indebted to United States." Stephenson v. Taylor (1932) 51 S.W.(2d) 508, 185 Ark. 1100.

24. —— Taxes

To same effect as first paragraph, see, Harrison v. Deutsch, 1938, 13 N.E.2d 511, 294 Ill.App. 8; U. S. v. Weisburn, D.C. Pa.1943, 48 F.Supp. 393; In re Mitchell's Restaurant, 1949, 67 A.2d 64, 31 Del.Ch. 121.

Until federal claims for taxes, whether federal insurance contribution taxes, federal unemployment compensation taxes or other taxes are paid in full, the states are not entitled either to collect or to retain any part of insolvent taxpayer's assets. Com. of Mass. v. U. S., Mass.1948, 68 S.Ct. 747, 333 U.S. 611, 92 L.Ed. 611.

Taxes due the United States are "debts" within requirement of this section that debts due the United States shall be first satisfied in case of debtor's insolvency. Id.

Taxes are "debts due to the United States" within this section providing for priority of payment of such debts where insolvent debtor makes a voluntary assignment of its property. People of State of Ill. ex rel. Gordon v. U. S., Ill.1946, 66 S.Ct. 841, 328 U.S. 8, 90 L.Ed. 1049.

In action by mortgagee against distributor of motor fuel to foreclose chattel mortgage, where receiver was appointed for all of assets of distributor who was found to be insolvent and all of the assets were liquidated, and the State of Texas and the United States intervened with claims for state and federal gasoline taxes, this section regarding priority of claims of the United States applied. U. S. v. State of Texas, 1941, 62 S.Ct. 350, 314 U.S. 480, 86 L.Ed. 356, 48 Am Bankr.Rep.N.S. 514.

Under California law, equitable right of set-off, under agreement between maker and payee that maker could offset against amount due on note any sums paid by maker pursuant to maker's indorsement of payee's indebtedness to bank, accrued to maker on insolvency of payee, notwithstanding that maker's obligation on indebtedness was then contingent, and such equitable right of set-off related back to date of agreement, which was prior to date of government's lien against property of payee for unpaid taxes, and hence government's lien could be enforced only as to unpaid balance on note after deducting indebtedness to bank actually paid by maker after date of tax lien. U. S. v. Winnett, C.C.A.Cal.1947, 165 F.2d 149.

Claims of government for income taxes against receiver of corporation are entitled to priority over claims other than those for expenses of administration. Hammond v. Carthage Sulphite Pulp & Paper Co. (D. C. N. Y. 1928) 34 F.(2d) 155.

Excise taxes due government on automobiles manufactured by receiver operating business held entitled to priority. Wire Wheel Corporation of America v. Fayette Bank & Trust Co. of Connersville, Ind. (C. C. A. Ind. 1929) 30 F.(2d) 318, certiorari denied 49 S.Ct. 514, 279 U.S. 873, 73 L.Ed. 1008.

"Taxes" are embraced within term "debts," within statute giving priority to debts due United States. Hatch v. Morosco Holding Co., Inc. (C. C. A. N. Y. 1932) 61 F.2d 944.

Where insolvent debtor was indebted to the United States for taxes, to town for real estate taxes, to bank under a real estate mortgage and to an individual under a mechanic's lien, and receiver had reduced all debtor's property to cash, as to that cash realized from sale of mortgaged property, mortgage lien was entitled to priority of payment over the claim of the United States and, under A.C.L.A.1949, §§ 16-1-113, 26-1-3, and 56-1-11, the town tax claim and the mechanic's lien, in that order, were entitled to priority over mortgage lien, but as to cash realized from sale of other property, the claim of the United States was entitled to priority of payment. Bank of Wrangell v. Alaska Asiatic Lumber Mills, D.C.Alaska 1949, 84 F.Supp. 1.

The word "debts" in provision that debts due the United States shall be first satisfied, in case of insolvency of debtor, includes income taxes. Foulke v. C. Pardee Works, D.C.N.J.1940, 35 F.Supp. 734.

The word "debts", in this section includes taxes. Rivard v. Bijou Furniture Co., 1941, 21 A.2d 563, 67 R.I. 251, opinion conformed to 27 A.2d 853, 68 R.I. 358.

Executor, in paying claims against deceased's estate, was required to pay claims for administration expenses first, then claims for estate taxes due the United States, then claims for inheritance taxes due the state, then claims for municipal taxes, and finally claims of general creditors. Bowes v. U. S., 1940, 11 A.2d 720, 127 N.J.Eq. 132.

Federal income taxes assessed against corporation for which insolvency receiver was later appointed held entitled to priority of payment over personal property taxes assessed by municipality against such corporation prior to appointment of receiver. Decker v. Decker Bldg. Material Co. (1935) 178 A. 196, 118 N. J. Eq. 177.

Right of United States to priority in payment of claim against insolvent corporation for income tax held superior to state's claim for franchise tax. West Coast Power Co. v. Southern Kansas Gas Co. (1934) 172 A. 414, 20 Del.Ch. 130.

In assignment for benefit of creditors proceedings, the United States, under this section giving the United States priority for its debts, has first priority for its tax claims, including interest on claim up to date of distribution. In re General Assignment for Benefit of Credtiors of Pavone Textile Corp., 1950, 96 N.Y.S.2d 765, 276 App.Div. 596, reversed on other grounds 97 N.E.2d 755, 302 N.Y. 206, affirmed 72 S.Ct. 357, 342 U.S. 912, 96 L.Ed. 682.

Where insolvent corporation made assignment for the benefit of creditors, this section was applicable, and hence claim of the United States for social security taxes and penalties was entitled to priority. In re Assignment for Benefit of Creditors of T. J. Simpson, Inc., 1939, 15 N.Y.S.2d 1021, 258 App.Div. 148.

Where decedent withheld for income taxes money due employees, and administrator subsequently received an income tax refund made under mistake of fact as to exact amount which was owed to federal government, refund did not lose its character as a trust fund and as a trust fund it was not a part of the estate of decedent and federal government was entitled to such amount in hands of administrator. In re Carl's Estate, Ohio Prob.1950, 94 N.E.2d 239.

Federal unemployment tax constitutes a "debt due to United States" within this section, notwithstanding section 1600 et seq. of Title 26 provides for reduction in amount of taxes, or surrender or waiver of portion thereof, equal to amount paid by taxpayer into an approved state unemployment compensation fund, up to 90 per cent. of taxes due. People, for Use of Murphy, v. Chicago Waste & Textile Co., 1945, 62 N.E.2d 537, 391 Ill. 29, affirmed 66 S.Ct. 841, 328 U.S. 8, 90 L.Ed. 1049, affirmed 67 S.Ct. 340, 329 U.S. 362, 91 L.Ed. 348.

Under this section, a claim of the United States against estate of deceased taxpayer for additional income taxes was entitled to priority over all claims except funeral expenses, costs of administration, and widow's award, notwithstanding that claim for additional income taxes was not filed within one year from granting of letters testamentary and that Smith-Hurd Stats. c. 3, §§ 61, 71, subd. 6, provided that claims not so filed were payable only out of subsequently inventoried assets. Harrison v. Deutsch, 1938, 13 N.E.2d 511, 294 Ill. App. 8.

Taxes due the United States are "debts" within this section. Brumer v. U. S., 1948, 34 N.W.2d 325, 252 Wis. 425.

"Debts", as used in this section giving debts due United States priority in event of insolvency, includes taxes due the United States. Spokane Merchants' Ass'n v. State, Wash.1942, 130 P.2d 373, 15 Wash. 2d 186.

Claims against receiver for federal taxes for unemployment insurance and old age benefits and for state personal property taxes, all of which taxes accrued during course of receivership, were entitled to priority over laborers' claims for wages earned during the receivership. Parks v. Central Door & Lumber Co., 1940, 102 P.2d 706, 164 Or. 363, 128 A.L.R. 375.

Taxes due United States constitute "debts" within provision of this section that debts due United States from insolvent person shall be first satisfied. National Sur. Corp., York Mills v. Sharpe, N.C.1952, 72 S.E.2d 109.

Though federal taxes for year 1949 were not required to be reported and paid until a later date, they accrued during 1949 and were payable as of January 1, 1950, and amount thereof was readily ascertainable, and there was a debt due United States on January 12, 1950, when receiver was appointed for taxpayer, within this section providing that whenever any person indebted to the United States is insolvent the debts due to United States shall be first satisfied. Leggett v. Southeastern People's College, 1951, 68 S.E.2d 263, 234 N.C. 595.

Employee's lien for wages against assets of insolvent corporation conferred by G.S. § 55-136, was subordinate to right of United States to be paid first for taxes owed by the insolvent corporation. Id.

Amounts due the federal government from insolvent debtor for withholding taxes, unemployment taxes, insurance contributions taxes and other taxes were "debts due United States", within this section giving priority to debts due the United States from an insolvent debtor. Sturgill v. Lovell Lumber Co., W.Va. 1951, 67 S.E.2d 321.

Under this section giving priority to debts due the United States, claims for federal taxes due from insolvent debtor are superior to nonspecific liens on property of debtor. Id.

In proceeding to determine priority of claims of state and United States for various taxes against assets of insolvent corporation, status of claims on date when receiver was appointed was controlling factor. State v. Woodroof, 1950, 46 So.2d 553, 253 Ala. 620.

Where claim by United States against deceased for income taxes was not filed with county judge within eight months after publication of first notice to deceased's creditors, county judge's action in denying motion by United States that claim be declared superior to all other claims could not be sustained on theory that judge had no jurisdiction to consider claim. U. S. v. Embrey, Fla.1940, 199 So. 41.

A probate judge, as to all claimants against an estate except the United States, is bound to declare the claims void if filed after eight months from time of first publication of notice to creditors, but as to claims by the United States, since it is not bound by laches or state statutes of nonclaims, the judge is bound to permit such claims to be filed, although not filed within eight months, and to consider them with other claims against estate. U. S. v. Embrey, Fla. 1940, 199 So. 41.

Where first notice to deceased's creditors was published on December 2, 1936, and on September 7, 1937, proof of claim by United States against deceased for income taxes was delivered to administratrix, and claim was filed with county judge on January 25, 1939, county judge was not authorized to deny motion by United States that claim be declared superior to other claims against estate on ground that claim was not filed within eight months after first publication of notice to creditors as required by Probate Act, Fla.Acts 1933, c. 16103, § 120. Id.

On insolvency of company which made real estate loans and sold mortgage notes with guaranty of payment, claim of United States for income taxes due from insolvent corporation held superior to claim of city for municipal taxes against corporation's personal property. Tropical Printing Co., Inc. v. Union Title Guarantee Co., Inc. (1934) 157 So. 534, 180 La. 702.

24½. —— Social Security taxes

Where corporate taxpayer, liable for both state and federal unemployment compensation taxes, became insolvent, by virtue of requirement of this section that debts due United States shall be first satisfied, the taxpayer's prior obligation attaching as of date of insolvency was to the government not to the state. Com. of Mass. v. U. S., Mass.1948, 68 S.Ct. 747, 333 U.S. 611, 92 L.Ed. 968.

The decision of the Supreme Court of the United States that claims of the United States for federal insurance contribution taxes and for federal unemployment compensation taxes under Social Security Act, 42 U.S.C.A. §§ 1401 et seq., had priority over claims of state for taxes under Smith-Hurd Stats.Ill. c. 48, § 243 was controlling upon same feature in subsequent case, notwithstanding federal insurance contribution taxes claimed by the United States in subsequent case arose under 26 U.S.C.A. §§ 1400 et seq. rather than under 42 U.S.C.A. §§ 1401 et seq. itself. People of State of Ill. ex rel. Gordon v. Campbell, Ill.1946, 67 S.Ct. 340, 329 U.S. 362, 91 L.Ed. 348.

Where taxpayer was insolvent at time of appointment of receiver, taxpayer committed an act of bankruptcy within this section by permitting the appointment of a receiver and hence the United States had benefit of priority given it for federal insurance contribution taxes. Id.

Federal social security legislation does not relieve state unemployment tax claims against insolvent taxpayer who has made a voluntary assignment for benefit of creditors from general statutory priority accorded to debts due to the United States. People of State of Ill., ex rel. Gordon v. U. S., Ill.1946, 66 S.Ct. 841, 328 U.S. 8, 90 L.Ed. 1049.

In distributing estate of insolvent who has made an assignment for benefit of creditors, claim of United States for federal insurance contribution taxes has priority over claim of state for contributions under state unemployment compensation act. U. S. v. Spencer, D.C.Mass. 1946, 65 F.Supp. 763, affirmed 160 F.2d 614, affirmed 68 S.Ct. 747, 333 U.S. 611, 92 L.Ed. 968.

In distributing estate of insolvent who made an assignment for benefit of creditors, United States had priority for capital stock taxes, federal insurance contribution taxes, and 10 per cent. of federal unemployment compensation taxes, but could not object to having 90 per cent. of its claim for federal unemployment compensation taxes reduced by payments to approved Massachusetts unemployment compensation fund. Id.

Where United States had claim for social security and withholding taxes against property assigned for benefit of creditors, though this section gave priority to debts due United States, priority did not include post-assignment interest on tax claim. Pavone Textile Corp. v. Bloom, 1951, 97 N.E.2d 755, 302 N.Y. 206, affirmed 72 S.Ct. 357.

Where decedent withheld certain fund from his employees in order to pay income taxes and social security taxes, amount withheld immediately became a trust fund in hands of decedent and de-

cedent could not change character of fund because its character was specified by statute and when decedent's administrator received erroneous income tax refund, amount received by administrator was impressed with a trust for benefit of United States of America for unpaid income and social security taxes. In re Carl's Estate, Ohio Prob.1950, 94 N.E.2d 239.

Where assets of insolvent corporation in hands of assignee for benefit of creditors were insufficient to pay all creditors, United States was entitled to priority over claims of wage earners and of the state for taxes as regards payment of amount due under section 1101 et seq. of Title 42 and was not limited to a mere 10 per cent. of its claim. In re White Plains Oil Corporation, 1941, 28 N.E.2d 472, 287 N.Y. 141.

Purpose of 1939 amendment to the Social Security Act, section 303(b) (2) (B) of Title 42, eliminating requirement that states pay United States half of net amounts of old age benefits recovered from estates of recipients, is not frustrated by giving debts due United States priority over a lien of state for old age assistance, on theory that the amendment indicated that states were to thereafter retain all amounts thus recovered, since further provision in amendment by which United States merely deducted amount of its share of recovery from grants subsequently made by it to state for old age assistance purposes disclosed no such congressional intent. In re Lane's Estate, Iowa 1953, 59 N.W.2d 593.

Where taxes due city did not become a lien until after appointment of receiver for insolvent corporations and subsequent to time when receiver became possessed of property, city was not entitled to priority in respect thereof over claim of United States for priority as to social security taxes and capital stock taxes. In re Ever Krisp Food Products Co., 1943, 11 N.W.2d 852, 307 Mich. 182.

Liens of city and county for tax on personal property attaching prior to appointment of receiver for corporation were superior to claim of the United States for priority as to social security taxes and capital stock taxes. Id.

25. —— Debts due United States officers and corporations

The statutory priority given to debt due to United States by estate of deceased debtor is unaffected by fact that a claim based on debt is filed in name of agency of United States or authorized officer of such agency, and it is sufficient that there is an obligation owed the United States. U. S. Dept. of Agriculture Emergency Crop and Feed Loans v. Remund, S.D.1947, 67 S.Ct. 891, 330 U.S. 539, 91 L.Ed. 613.

The obligation owed by maker of note insured under section 1703 of title 12 is a simple debt to the payee, and such status of the debt cannot be changed, so as to create any priority, by the insured payee's assignment of the note, upon payment, to the Federal Housing Administrator in the name of the United States after maker has been adjudicated bankrupt. In re Miller, C.C.A.N.Y.1939, 105 F.2d 926.

That debts due to the United States on notes given to bank by borrower under the National Housing Act and indorsed to Federal Housing Administrator arose out of ordinary insurance transactions did not defeat priority of Administrator's claim on notes to assets of borrower's estate in bankruptcy. Wagner v. McDonald, C.C.A.Mo. 1938, 96 F.2d 273.

Deposit in bank by Department of Interior employee, who was cashier and special disbursing agent of certain Indian tribes, of individual Indian moneys held in trust by the United States held "indebtedness due United States" within statutes. Barnett v. American Surety Co. of New York (C. C. A. Okl. 1935) 77 F.(2d) 225.

Indebtedness arising out of contract of Emergency Fleet Corporation held not one to United States entitled to priority. West Virginia Rail Co. v. Jewett Bigelow & Brooks Coal Co. (D. C. Ky. 1928) 26 F.(2d) 503.

Claims assigned to the United States, or to an agency standing in its place and endowed with its rights to priority before appointment of a receiver, have priority over the claims of other creditors. Engleman v. Commodity Credit Corp., D.C.Cal.1952, 107 F.Supp. 930.

Claims assigned to the United States, or to an agency standing in its place and endowed with its rights to priority, after filing of petition in bankruptcy, have no priority. Id.

Funds deposited in bank by trustees in bankruptcy were not "debts due United States" as regards priority on bank's insolvency. American Surety Co. of New York v. Royall (1931) 158 S. E. 127, 160 S. C. 1.

Postal funds deposited by postmaster in state bank held "debts due United States." U. S. ex rel. Ray v. Porter (D. C. Idaho, 1927) 24 F.(2d) 139.

Notes payable to United States for price of vessel requisitioned by Shipping Board during construction held entitled to priority on appointment of receiver for purchaser. Whan v. Green Star S. S. Corporation (C. C. A. N. Y. 1927) 22 F.(2d) 483, certiorari denied 48 S.Ct. 322, 276 U. S. 629, 72 L.Ed. 740.

A claim filed against bankrupt by Federal Housing Administrator based on a note acquired by assignment from a general creditor after petition in bankruptcy was filed was not entitled to priority over general claims. In re Miller, D.C. N.Y.1938, 25 F.Supp. 336, affirmed 105 F. 2d 926.

An amount due by bankrupt to Federal Housing Administration, which became the owner of an obligation of the bankrupt for money borrowed by the bankrupt from a bank which the administration had insured against losses it might sustain as result of the loan which was made for the purposes of chapter 13 of Title 12, was entitled to priority as a "debt due to the United States." In re Wilson, D.C.Tex.1938, 23 F.Supp. 236.

A loan made by the Farm Credit Administration to bankrupt was entitled to priority as a "debt due to the United States," since the money loaned to the bankrupt was the money of the United States, which was really the party in interest. Id.

Moneys derived from operation of private corporation while operated under federal court receivership and deposited in bank designated as depository held not "moneys of United States," as regards preference on bank's insolvency. Wilson v. Lyon County Bank (D. C. Nev. 1933) 4 F. Supp. 608.

That receiver of private corporation is appointed by federal court does not constitute him "officer of United States," as regards preference to money in his possession deposited in bank becoming insolvent. Id.

That debts due to the United States on note given to bank by insolvent borrower under Federal Housing Act and indorsed to Federal Housing Administrator arose out of ordinary insurance transaction did not defeat priority of Administrator's claim on note to assets

of insolvent borrower's estate. In re Dickson's Estate, 1938, 84 P.2d 661, 197 Wash. 145.

The right of United States to priority in payment of claim on note given by insolvent borrower to bank under Federal Housing Act and assigned to Federal Housing Administrator "acting on behalf of the United States of America" prior to insolvency of borrower could not be defeated on theory that Administrator as such was not a creditor of insolvent estate, where Administrator made no claim to ownership of claim in his own right but acted as an officer of the United States. Id.

Under this section the right of the United States to priority in payment of claim on note given by insolvent borrower to bank under Federal Housing Act and assigned to Federal Housing Administrator prior to insolvency of borrower was not affected by fact that priority did not attach to note in hands of bank, since priority did not depend on how the United States acquired title to note or on status of note prior to transfer. Id.

Deposit in bank by custodians of divers United States army post exchange funds did not create "debt due the United States" so as to entitle custodians or their assignee to preference on bank's assets upon failure of bank. Maryland Casualty Co. v. Hurt (1934) 75 S.W.(2d) 772, 256 Ky. 249.

25⅛. —— Commodity Credit Corporation

Grain merchant who in good faith made voluntary assignment for benefit of his creditors lost all legal title to his assets, and, therefore, the Commodity Credit Corporation, an agency of the United States with the United States' right to priority with respect to debts due from insolvent or bankrupt debtors, did not obtain such priority by virtue of an assignment to it of the claim of one of the grain merchant's creditors made subsequent to the voluntary assignment for benefit of creditors. Engleman v. Commodity Credit Corp., D.C.Cal.1952, 107 F.Supp. 930.

25¼. —— Compensation due receiver

In distribution of an insolvent estate, compensation of receiver and administration expenses were entitled to priority over a debt due the United States. Lerman v. Lincoln Novelty Co., 1941, 21 A.2d 827, 130 N.J.Eq. 144.

25½. —— Farm Credit Administration

Regional attorney for Farm Credit Administration had authority to make the United States a party to state court proceeding for administration of estate of one who had executed a note payable to the Secretary of Agriculture, and the government was therefore bound by decision of state tribunal allowing government's claim on note only as a common claim notwithstanding this section giving priority to United States in payment of claims against insolvent debtor. U. S. v. Muntzing, D.C.W.Va.1946, 69 F.Supp. 503.

Farm Credit Administration is such an agency of United States government as entitles government to prior claim under this section for amount of crop loan made by Farm Credit Administration. Federal Reserve Bank of Dallas v. Smylie. Tex.Civ.App.1939, 134 S.W.2d 838.

25¾. —— Reconstruction Finance Corporation

The claim of reconstruction finance corporation against fund deposited by banking commissioner for benefit of those who had made deposits for savings bank equipment, and for those creditors who had filed no claims, was not entitled to priority and preference as a claim on a "debt due the United States", though the corporation was a federal corporation and an agency of the United States Government. Reconstruction Finance Corporation v. Brady, Tex.Civ.App.1941, 150 S.W. 2d 357.

25⅞. Farm Credit Administration

Where claim was filed against estate of deceased debtor in name of governor of Farm Credit Administration for and on behalf of United States, method of filing claim was proper. U. S. Dept. of Agriculture, Emergency Crop and Feed Loans v. Remund, S.D.1947, 67 S.Ct. 891, 330 U.S. 539, 91 L.Ed. 613.

Where Farm Credit Administration was an unincorporated agency of United States government administering and lending funds appropriated out of United States Treasury, debt owed the Farm Credit Administration was a "debt owed the United States" within this section. Id.

26. —— Debts arising out of federal control of railroads

This section does not apply to indebtedness of railroad to United States arising under sections 207, 209 and 210 of Transportation Act of 1920 (Act Feb. 28, 1920, c. 91, 41 Stat. 462, 464, 468) section 209 being 49 USCA 77. U. S. v. Guaranty Trust Co. of New York (Minn. 1930) 50 S. Ct. 212, 280 U.S. 478, 74 L.Ed. 556.

Loan to railroad under Transportation Act Feb. 28, 1920 (repealed as to provision in question) is within this section. Piedmont Corporation v. Gainsville & N. W. R. Co. (D. C. Ga. 1929) 30 F.(2d) 525.

26¼. —— Federal Housing Administration

The provision of section 104 of Title 11 giving priority to wage claims over the claims of the United States was inapplicable in state court receivership proceeding against insolvent corporation, and did not give wage claims against the corporation priority over the United States which filed claim for amount required to be paid by Federal Housing Administration on its guaranty contract executed under section 1701 et seq. of Title 12. U. S. v. Emory, 1941, 62 S.Ct. 317, 314 U.S. 423, 86 L.Ed. 315, 48 Am. Bankr.Rep.N.S. 499.

In state court receivership proceeding against insolvent corporation, wage claims were not entitled to priority over claim of the United States for amount which Federal Housing Administration was required to pay on its guaranty contract executed under section 1701 et seq. of Title 12, because of a Missouri statute, Rev.St.Mo.1939, § 1332, giving priority to wage claims, since said state statute was in conflict with this section giving priority to United States in payment of claims against an insolvent debtor. Id.

In state court receivership proceeding against insolvent corporation, claim of the United States for an amount paid by Federal Housing Administration on its guaranty contract was entitled to priority over wage claims against the corporation, as against contention that Congress in enacting section 1701 et seq. of Title 12 intended to surrender the statutory priority in favor of claim of United States against insolvent debtor, in case of a claim arising under said Act. Id.

The Federal Housing Administration is an "agency of the United States," and its claims are entitled to governmental priority in bankruptcy proceedings in absence of some affirmative indication by Congress to the contrary. Korman v. Federal Housing Administrator, 1940, 113 F.2d 743, 72 App.D.C. 245.

Where debtor's negotiable note was irrevocably assigned to the Federal Housing Administrator acting on behalf of the United States before debtor filed his petition in bankruptcy, the claim held by the Federal Housing Administration when the petition was filed was a "debt due to the United States" entitled to priority under this section, in view of section 104 sub. a (5) of Title 11, Bankruptcy. Id.

The provision of section 1702 of Title 12, Banks and Banking, for suit by and against the Federal Housing Administrator in his official capacity constitutes no express "waiver" of other legal prerogatives of the sovereign, but merely provides that the immunity of the sovereign to suit should not be asserted in respect to the administration of the Federal Housing Administration, as against contention that the provision indicates congressional intention that the Federal Housing Administration should be regarded as a separate legal entity whose claims should not be accorded governmental priority in bankruptcy proceedings. Id.

The provision of section 1702 of Title 12, Banks and Banking, for suit by and against the Federal Housing Administrator in his official capacity does not indicate congressional intention to withdraw claims of the Federal Housing Administration from the protection of this section providing that debts due to the United States from an insolvent person shall be first satisfied. Id.

Where maker who knew and contemplated that note was insured under section 1703 of Title 12 defaulted prior to being adjudicated bankrupt, but Federal Housing Administrator did not pay insured payee and acquire assignment of the note in name of United States until after maker had been adjudicated bankrupt, claim of United States based on the note was not entitled to priority over claims of other creditors on the basis of any express or implied agreement to indemnify the United States, since, even if such an agreement were implied, the United States would be required to prove its claim only as the claim of the insured payee under the principles of subrogation. In re Miller, C.C.A.N.Y.1939, 105 F.2d 926.

Where claim against deceased for improvements to deceased's real estate was assigned to Federal Housing Administration after deceased's death, United States was not entitled to preference in payment of claim, notwithstanding this section, since there was no debt due United States at time of deceased's death. In re Wood's Estate, 1939, 12 N.Y.S.2d 816, 171 Misc. 542.

The Federal Housing Administrator, taking note held by bank four months after maker's voluntary assignment for benefit of creditors, is not entitled to priority of his claim for amount of such note over other claims on settlement of assignee's account. In re Buyum, Misc. 1939, 12 N.Y.S.2d 501.

Claim acquired by Federal Housing Administration by virtue of judgment on note for loan to a decedent by financial institution insured under National Housing Act, section 1701 et seq. of Title 12, was a "debt due to United States," within meaning of this section. In re Lane's Estate, Iowa 1953, 59 N.W.2d 593.

Recorded liens of state for old age assistance furnished to decedent and her husband, although prior in time to debt owing by decedent to Federal Housing Commissioner, were not specific or perfected liens impliedly excepted from this section giving priority to debts due to United States when the estate of any deceased debtor is insufficient to pay all debts. Id.

26⅜. National Labor Relations Board

Claim of National Labor Relations Board against bankrupt in amount of back pay order for unfair labor practices was not, by virtue of fact that Board is agency of United States, a "debt owed to United States" within this section giving priority to such debts in respect to insolvent persons, and same was consequently not entitled to priority under Bankruptcy Act, Title 11. Nathanson v. N. L. R. B., Mass.1952, 73 S.Ct. 80, 344 U.S. 25, 97 L.Ed. —.

26½. —— Claim against contractor's surety

This section was inapplicable to rights of contractor's sureties and of United States to fund withheld from contractor by municipal housing commission. Glenn v. American Sur. Co., C.C.A.Ky.1947, 160 F.2d 977.

Building contractor's sureties who completed contract for municipal housing commission had right to interest on their claims against fund withheld from contractor by the Commission, and claims of United States for contractor's taxes were not prior to such claim for interest. Id.

Claim against insolvent surety on insolvent contractor's bond to United States for amount due for labor and materials furnished contractor held not entitled to priority as for debt due United States, though statute authorizes suit against contractor's receiver and surety in name of United States for claimant's benefit. Fred L. Emmons, Inc. v. Union Indemnity Co. (1934) 175 A. 141, 117 N. J. Eq. 46.

26¾. —— Funds of Indian deposited by Indian Agency

Guardian's deposit in failed bank representing distributive share of minor Indian heirs in funds which deceased allottee had to her credit in Indian Agency held entitled to priority as "debt due United States," where payments thereof to administrator were not for best interest of Indian heirs and bank officers knew that funds belonged to restricted Indians. U. S. v. Barnett (D. C. Okl. 1934) 7 F. Supp. 573.

Claim of United States against insolvent bank is entitled to priority as "debt due United States" if deposit is due it for Indian tribe or individual members thereof. Id.

27. Property to which priority applies—In general

The satisfaction of a claim of the United States in case of voluntary assignment of property of a debtor who has insufficient property to pay all of his debts must be out of the debtor's estate, and if the debtor's property is divested out of the debtor before right of preference has accrued to the United States, the property cannot be subjected to the claim of the United States. People of New York v. U. S., C.C.A.Del.1939, 106 F.2d 210.

29. —— Proceeds of debtor's surety bond

Judgments in favor of the United States on bonds executed by insolvent surety company held not excluded from priority because of statute prescribing conditions under which surety company may write certain surety bonds in favor of United States. U. S. v. Knott (Fla. 1936) 56 S.Ct. 902, 298 U.S. 544, 80 L.Ed. 1321, 104 A.L.R. 741.

United States held entitled to priority for debts due it, as to proceeds of sale of securities deposited with state treasurer by insolvent surety company to qualify in state, where deposit did not divest company's title to securities nor create specific perfected lien. Id.

United States could secure satisfaction in Florida for debts due it from proceeds of sale of securities deposited with Florida state treasurer by insolvent New Jersey surety company which was undergoing liquidation in New Jersey, as against contention that proceeds remaining after satisfaction of claims of local creditors must be transmitted to New Jersey for administration. Id.

29½. —— Stockholders' liability fund

Priority of United States' claim against insolvent state bank's assets does not extend to stockholders' liability fund. U. S. v. State Bank of Musselshell, Mont. (D. C. Mont. 1932) 60 F.(2d) 157.

30. —— Estates of deceased debtors

Under this section, federal taxes owing by decedent's estate were required to be paid before making a distribution of decedent's property rendering the estate insolvent. U. S. v. Munroe, D.C.Pa.1946, 65 F.Supp. 213.

The assets of the deceased taxpayer are primarily liable for payment of his federal income taxes, and federal government can remain aloof from state court proceedings to probate taxpayer's estate, and nothing done therein can affect such primary liability. U. S. v. Fisher, D.C.Mich.1944, 57 F.Supp. 410.

Where, without payment of decedent's outstanding income tax liability, there was distribution to heirs of all assets of decedent's estate, so that the estate was insolvent, each donee who had received a part of such distribution was severally liable under the "trust fund" doctrine to account for value of assets so distributed to him and to be required to pay such tax to extent of assets so received, and, in establishing such liability, recognition need not be given to equities or priorities that might exist between such donees. Id.

31¼. Proceeds of pension

In proceeding to determine whether money which Veterans' Bureau mistakenly paid to committee of convict and which committee deposited in insolvent bank was payable as preferred claim, United States, Veterans' Bureau, or proper representative should be made party in addition to committee and receiver of bank, and convict and intended recipient of money should be served with process. Masters v. Morrison, 1936, 183 S.E. 691, 117 W.Va. 33.

Guardian was not entitled to preferred claim against insolvent bank for pension money paid to ward by federal government and deposited. Taylor v. Cassell (1933) 58 S.W.(2d) 689, 187 Ark. 124.

31½. —— Liability of stockholders

The liability of the stockholders of an insolvent corporation is a trust fund, and not an asset as to which the United States has a priority of right. State ex rel. Rankin v. Wibaux County Bank of Wibaux (1929) 281 P. 341, 85 Mont. 532, certiorari denied 50 S.Ct. 239, 281 U.S 725, 74 L.Ed. 1142.

31 9/16. —— Stockholder's liability fund

One subrogated to United States right to priority as preferred creditor of insolvent bank held without prior right to payment from stockholders' liability fund. State ex rel. Sorensen v. Thurston State Bank (1933) 249 N. W. 90, 129 Neb. 120.

31⅝. —— Veterans' disability compensation

On insolvency of bank, claim of World War veteran for savings deposit consisting of proceeds of loan on adjusted service certificate held not entitled to preference under statute giving United States priority in payment over other creditors of insolvent debtor, since United States, making payment to veteran, reserved no title to or control over fund and on deposit of check, title passed to bank and debtor-creditor relationship was created between bank and veteran. People ex rel. Nelson v. Stony Island State Sav. Bank (1934) 192 N.E. 682, 358 Ill. 118.

Mentally incompetent war veteran's compensation deposited by guardian in bank held not entitled to priority against bank becoming insolvent as "debt due United States." Reichert v. Berlin State Bank of Marne, Mich. (1933) 265 Mich. 150, 251 N. W. 340.

After the government has directly transmitted to a veteran its check for the amount of a loan there is no reservation on the part of the government of any interest in the money loaned that could authorize the allowance of a claim to priority on the ground of ownership of the fund by the government. People ex rel. Nelson v. Stony Island etc. Bank (1933) 272 Ill. App. 365.

31¾. —— Proceeds of war risk insurance

Claim for war risk insurance money paid by government to administrator of estate of deceased war veteran held not entitled to priority upon insolvency of bank in which money was deposited as "debt due the United States." Hansen v. Hadlock (1935) 50 P.(2d) 417, 87 Utah 474.

Guardian was not entitled to preferred claim against insolvent bank for pension money paid to ward by federal government and deposited. Taylor v. Cassell, 1933, 58 S.W.2d 689, 187 Ark. 124.

Certificate of time deposit issued to beneficiary of war risk policy for funds derived therefrom held not entitled to preferred standing on bank's insolvency. Duzan v. Cantley, 1932, 55 S.W.2d 711, 227 Mo.App. 670.

Administrator's claim to war risk insurance against insolvent bank held preferred claim to moneys belonging to United States until payment to beneficiaries. Butler v. Cantley (1932) 47 S.W.(2d) 258, 226 Mo. App. 1047.

Mentally incompetent war veteran's compensation deposited by guardian in bank held not entitled to priority against bank becoming insolvent as "debt due United States." Reichert v. Berlin State Bank of Marne, Mich., 1933, 251 N.W. 340, 265 Mich. 150.

Funds received from Veterans' Bureau, deposited in bank by guardian of mentally incapacitated war veteran, held entitled to preference as "money of the United States" on bank's insolvency. Anderson v. Olivia State Bank, 1932, 243 N.W. 398, 186 Minn. 396.

War risk insurance paid to insured's administratrix and deposited by administratrix in bank held "money of United States" on account of which administratrix had first lien on bank's assets. State ex rel. Sorenson v. Security Bank of Creighton (1931) 237 N. W. 620, 121 Neb. 515.

War risk insurance payments by United States to guardian of incompetent soldier, which payments were deposited in bank by guardian, held "money of United States"; hence guardian's claim was first lien on bank's assets; guardian of incompetent soldier to whom war risk insurance payments are made handles such fund as agent for government. State ex rel. Spillman v. First State Bank of Pawnee City (1931) 237 N. W. 623, 121 Neb. 515.

Claim for war risk insurance and disability compensation paid by government to guardian of war veteran and deposited in bank held not entitled to priority upon bank's insolvency as "debt due United States." Spicer v. Smith (1933) 53 S. Ct. 415, 288 U.S. 430, 77 L.Ed. 875.

Government's payments to mother of deceased soldier, deposited by agent selected by recipient, held not entitled to

priority, on bank's insolvency, as "debt due United States." State ex rel. Robertson v. Bank of Bristol (1933) 55 S.W.(2d) 771, 165 Tenn. 461.

Failed bank, in which moneys paid to guardian of World War veteran were deposited, held not "indebted to United States," so as to give guardian preference. Taylor v. Bankers' Trust Co., 1933, 57 S.W.(2d) 1059, 186 Ark. 1109.

Where bank, as guardian of deceased World War veteran's minor children, received from Veterans' Bureau compensation and war risk payments, and commingled them with bank's general funds, and surety, on bank's guardian bond, after bank's insolvency, paid funds to successor guardian, surety's claim against bank held not entitled to priority as "debt due United States." In re Home Sav. Bank (1933) 168 S. E. 688, 204 N. C. 454.

Funds of veteran deposited in bank by his guardian remain the property of the United States and the claim therefor is preferred in the bank's insolvency. Nelson v. James B. Colegrove & Co. State Bank (1932) 267 Ill. App. 317.

31⅞. —— Deposits of Indians

Money possessed by United States for benefit of Indian wards and deposited in insolvent bank in name of United States by superintendent of reservation or by cashier and special disbursing agent, protected by bond running to United States, constitute preferred claim under this section. U. S. v. Johnson (C.C.A.Okl.1936) 87 F.2d 155.

Restricted funds disbursed through Osage agency to administrator of restricted fullblood allotted Osage Indian and distributed in 1925 and 1926 upon county court's orders with approval of superintendent of agency to guardian of minor unallotted children of one-half Indian blood and deposited by guardian in insolvent bank or invested in certificates of deposit did not create "debt due to United States" from bank within this section. Id.

Deposit in bank, by Commissioner of Indian Affairs of United States, of Indian moneys is "indebtedness due United States" within statute giving priority to claims due United States in cases of insolvency. In re Liquidation of Bank of Woodburn (Or.1935) 42 P.(2d) 740, 149 Or. 649.

State Superintendent of Banks taking possession of defunct bank for purposes of liquidation had duty to list debt due United States for Indian moneys deposited in bank as preferred claim and to make payment as such regardless of whether any claim for priority had been made. Id.

Surety on bank's bond to United States securing Indian moneys deposited with bank, upon paying obligations of bank to United States upon insolvency of bank, became subrogated to rights of United States and was equally entitled to have its claim paid first irrespective of any provisions in state statutes and irrespective of fact that surety was a paid surety. Id.

32. Rights of sureties

A surety who makes good under his contract of suretyship upon principal's default acquires an equitable lien against unpaid balance in hands of person in whose favor bond runs, and such equitable lien relates back to date of the contract and is superior to claim of United States for unpaid taxes for periods subsequent to the contract of suretyship, although prior to date of payment by surety. Glenn v. American Sur. Co., C.C.A. Ky.1947, 160 F.2d 977.

Surety on bonds securing United States deposits in insolvent banks is entitled to interest at rate banks contracted to pay United States. Mothersead v. U. S. Fidelity & Guaranty Co. (C. C. A. Okl. 1927) 22 F.2d 644, certiorari denied 48 S.Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. New Amsterdam Casualty Co., C.C.A. Okl.1927, 22 F.2d 654, certiorari denied 48 S.Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. Fidelity & Deposit Co. of Maryland, C.C.A.Okl.1927, 22 F.2d 654, certiorari denied 48 S.Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. Fidelity & Casualty Co. of New York (C.C.A.Okl. 1927) 22 F.2d 654, certiorari denied 48 S. Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. American Surety Co. of New York, C.C.A.Okl.1927, 22 F.2d 655, certiorari denied 48 S.Ct. 421, 276 U.S. 637, 72 L.Ed. 744.

When surety on payment bond entered into suretyship contract with understanding that if it discharged principal's obligation it would be entitled to principal's right against the government, the surety was chargeable with knowledge of this section giving the government priority and agreement of government that surety should become subrogated to its principal's rights was made subject to limitation that government should nevertheless have the statutory priority. Schmoll v. U. S., 1946, 63 F.Supp. 753, 105 Ct.Cl. 415, certiorari denied 67 S.Ct. 69, 329 U.S. 724, 91 L.Ed. 627.

Where insolvency of contractor is formal, the United States has priority over contractor's surety on a payment bond. Id.

A surety's equitable lien against unpaid balance in hands of the party in whose favor the bond runs, upon making good contract for default, relates back to the date of the contract and is superior to a claim of the United States for unpaid unemployment taxes for periods subsequent to the date of the contract of suretyship, although prior to the date of payment by surety. American Sur. Co. of N. Y. v. City of Louisville Municipal Housing Commission, D. C.Ky.1945, 63 F.Supp. 486, affirmed 160 F.2d 977.

This section providing for priority of payment of debt due the United States when debtor has made a voluntary assignment, etc., has no application in suit by surety on debtor's performance and payment bond, which has paid labor and material claims, in connection with a construction contract to enjoin payment of tax claim against debtor out of balance due on contract price, which balance is subject to equitable lien of surety. New York Cas. Co. v. Zwerner, D.C.Ill.1944, 58 F.Supp. 473.

Surety on living insolvent contractor's bond was entitled to judgment against United States for amount paid to materialmen and laborers, where amount due from United States under contract was more than sufficient to cover such amount but insufficient to cover contractor's taxes owed to United States, which attempted to set off entire sum due under contract against such taxes. Maryland Casualty Co. v. U. S., Ct.Cl. 1944, 53 F.Supp. 436.

Where surety on depository bond paid claim of United States against insolvent bank for deposit of Indian funds, took assignment of claim and assigned it to another, assignee held entitled to preferred claim against bank, though he had been director and stockholder. Markham v. Barnett (1936) 54 P.(2d) 1021, 176 Okl. 240.

A surety whose liability on bond given in compromise of income taxes of corporation was enforced had mere right to be first paid when there were available proceeds from assets of corporation, and receiver authorized by court to

continue corporate business was not personally liable to surety for failure to sell corporate assets when they first came into receiver's hands, at which time they would have been sufficient to pay surety, although they were insufficient after receiver paid liabilities incurred in continuing the business. Herman C. Miller Co. v. Silvers Mfg. Co., 1940, 289 N.W. 699, 227 Iowa 1000.

In absence of intervening equity, sureties on bond securing deposit of money belonging to United States in insolvent state bank held subrogated to priority right of United States on paying deposit. State ex rel. Sorensen v. Thurston State Bank (1931) 237 N. W. 293, 121 Neb. 407.

82½. Subrogation

A surety who makes good under his contract of suretyship upon principal's default acquires an equitable lien against unpaid balance in hands of person in whose favor bond runs, and such equitable lien relates back to date of the contract and is superior to claim of United States for unpaid taxes for periods subsequent to the contract of suretyship, although prior to date of payment by surety. Glenn v. American Sur. Co., C.C.A.Ky.1947, 160 F.2d 977.

Where railway corporation and affiliates agreed that any deficiency in income tax computed on basis of consolidated return might be assessed against any overassessment refunded to corporation, affiliates did not acquire any priority of claim which United States may have had over trustees of corporation's bond mortgage against corporation which subsequently went into receivership by consent, as result of Commissioner's application of overpayments by the affiliates to amounts due on account of underpayments by corporation, such amounts never having come into receiver's hands, since the voluntary agreement of the affiliates precluded them from being legally subrogated, and they had merely a common claim against the corporation for such amount. Bankers Trust Co. v. Florida East Coast Car Ferry Co., C.C.A.Fla.1937, 92 F.2d 450.

Where affiliated corporations filed consolidated income tax return and one corporation paid entire tax and relied upon the affiliate for reimbursement, receiver of the corporation paying tax could not be subrogated to rights of government against the affiliate, since the corporation paying tax was a "volunteer" and therefore payor's receiver would not be directed to file preferred claim against the insolvent affiliate for reimbursement. Foulke v. C. Pardee Works, D.C.N.J.1940, 35 F.Supp. 734.

Where receiver had been appointed for insolvent debtor, payment of government's claim for delinquent income taxes by trustee-mortgagee, to protect mortgage estate, would not put city having claim for delinquent personal property taxes among those having priority, since the trustee-mortgagee would not be a "stranger" or "volunteer" and upon payment would be subrogated to same preference in distribution of assets of debtor that government would have had but for the payment by the trustee-mortgagee. Id.

Where federal government had claim for delinquent income taxes against receivership estate and, in case government proceeded against real estate to satisfy claim, trustee-mortgagee would be compelled to pay government's claim to protect the mortgage estate from loss by reason of government's superior claim, city's conditional bid for receivership assets payable by surrender of city's claim for delinquent personal property taxes was rejected, since the trustee-mortgagee's right to subrogation on payment of government's claim could not be circumvented by city's bid. Id.

33. Priority as against adverse rights —In general

Priority of claim of United States on loan to railroad as against sundry adverse claims determined. Piedmont Corporation v. Gainsville & N. W. R. Co. (D. C. Ga. 1929) 30 F.(2d) 525.

Under this section providing that whenever the estate of a deceased debtor in the hands of the executors or administrators is insufficient to pay all debts due from deceased, the debts due to the United States shall be first satisfied, the claim of the United States for federal income taxes was entitled to priority of payment over claim of a general creditor, notwithstanding provisions of state statute, 20 P.S. § 501, prescribing order for paying debts of a decedent. In re Kuhn's Estate, 1941, 21 A.2d 513, 146 Pa.Super. 1.

Property exempt from administration of a decedent's estate belongs to surviving spouse immediately on death of his or her spouse as a right growing out of marriage relation and takes precedence over any claims of United States under this section giving to debts due United States a priority over all other debts due from a deceased debtor. In re Carl's Estate, Ohio Prob.1950, 94 N.E.2d 239.

United States was not entitled under this section to priority in its favor as against creditors of living debtor unless it showed clearly that property of debtor was insufficient to pay all debts, that debtor had made voluntary assignment thereof or that the effects of an absconding, concealed or absent debtor had been attached by process of law, or that act of bankruptcy had been committed. Tildesley Coal Co. v. American Fuel Corp., 1947, 45 S.E.2d 750, 130 W.Va. 720.

Creditors' claims if not preferred at time of assignment for benefit of creditors were subordinate to claims of the United States, and hence rights of assignor's landlord and city claiming taxes must be determined irrespective of attachment and distraint levied on assignor's property after assignment. Waddill, Holland & Flinn, 1944, 28 S.E.2d 741, 182 Va. 351, reversed on other grounds 65 S. Ct. 304, 323 U.S. 353, 89 L.Ed. 294.

33½. —— Priority over widow's allowance

Statutory allowance to widow or minor children of a decedent for use of support is prior to any claims of United States Government under this section giving debts due to United States a priority over all other debts due from a deceased debtor. In re Carl's Estate, Ohio Prob. 94 N.E.2d 239.

Widow's claim for widow's allowance was not superior to claim of United States based on crop loan made to deceased. Federal Reserve Bank of Dallas v. Smylie, Tex.Civ.App.1939, 134 S.W.2d 838.

35. —— Expenses

The United States had priority against Pennsylvania taxpayer's estate for balance due under income tax assessments except as to payments which executrix made for administrative and funeral expenses and for headstone. U. S. v. Weisburn, D.C.Pa.1943, 48 F.Supp. 393.

36. —— Priority over debts due a state

If priority of the United States for payment of debts due the United States from insolvent debtor can be defeated by specific and perfected liens, the state's lien against such debtor must be definite and not merely ascertainable in the future by taking further steps in at least three respects as of the crucial time, namely, the identity of lienor, the amount

of the lien, and property to which it attaches, and it is not enough that lienor can bring such elements or any of them from broad generality to specific identity. People of State of Ill. ex rel. Gordon v. Campbell, Ill.1946, 67 S.Ct. 340, 329 U.S. 362, 91 L.Ed. 348. See, also, In re Brumer, Wis.1948, 31 N.W.2d 599.

This section giving priority to debts due to the United States provided a remedy applicable to the collection of federal unemployment compensation taxes and insurance contributions taxes due from insolvent taxpayer who had made a general assignment for benefit of creditors and since such remedy is not inconsistent with either the express language or purpose of social security legislation, claims of federal government for such taxes must be given priority over claims for state unemployment taxes. People of State of Ill., ex rel. Gordon v. U. S., Ill.1946, 66 S.Ct. 841, 328 U.S. 8, 90 L.Ed. 1049.

A claim of the United States for federal gasoline taxes was entitled to priority, under this section regarding priority of claims of the United States, over claim of the State of Texas for motor fuel taxes against assets of insolvent motor fuel distributor, where prior to appointment of receiver for assets of the distributor the State of Texas had made no move to assert lien provided in Texas statute, Vernon's Ann.Civ.St.Tex. art. 7065a, since the priority which attached to the claim of the United States on appointment of receiver could not be divested by any subsequent proceeding in connection with the state's lien. U. S. v. State of Texas, 1941, 62 S.Ct. 350, 314 U.S. 480, 86 L. Ed. 356, 48 Am.Bankr.Rep.N.S. 514.

Claim of United States against proceeds of sale of personal property of insolvent corporation in receiver's hands by virtue of assessment of federal income taxes held to have priority over claims of counties for taxes under assessments subsequently made or under assessments of taxes made before receiver was appointed and before assessment by Commissioner of Internal Revenue, where assessments by counties were against personal property of corporation, and there was no distraint or any other procedure taken to render the taxes a specific lien. Spokane County v. U. S. (1929) 49 S. Ct. 321, 279 U. S. 80, 73 L.Ed. 624.

Claim of United States against insolvent corporation for taxes and for damages held entitled to priority over lien of state franchise tax not enforceable at time receivers were appointed, but serving merely as caveat of more perfect lien to come on determination of amount of tax. People of State of New York v. Maclay (1933) 53 S.Ct. 323, 288 U.S. 290, 77 L.Ed. 754.

Where assignment was made for benefit of creditors of an insolvent corporation, federal capital stock taxes, federal insurance contributions taxes, and federal unemployment compensation taxes were "debts due to the United States" within this section and fact that insolvent or assignee might have paid 90 per cent of federal unemployment compensation taxes to State unemployment fund did not give state priority as respects such 90 per cent in view of insufficiency of assets to pay federal tax claims in full. Com. of Mass. v. U. S., C.C.A.Mass. 1947, 160 F.2d 614, affirmed 68 S.Ct. 747, 333 U.S. 611, 92 L.Ed. 968.

Where insolvent corporation filed answer to equitable proceedings against it for appointment of receiver, joining in prayer for the receivership, United States was entitled to priority of payment of claims against the corporation for income taxes, under this section. People of New York v. U. S., C.C.A.Del.1939, 106 F.2d 210.

Where Delaware corporation was insolvent and proceeds in hands of receivers were insufficient to pay preference claims, the interest of the state of New York in corporate assets of the corporation as a result of the statutory lien of the state for license taxes did not bar priority of claim of the United States for unpaid income taxes, since only a specific perfected lien would bar such priority. Id.

Where Delaware corporation was insolvent and proceeds in hands of its receivers were insufficient to pay preference claims, the claims of state of New York for franchise taxes incurred by the corporation subsequent to receivership was not entitled to priority over claims of United States for unpaid income taxes on ground that the taxes incurred were an administrative expense of the receivership, in view of the fact that the receivership was in the District Court for the district of Delaware, and was not in New York. Id.

The claim of United States upon estate of decedent predicated upon notes executed by decedents during their lifetime had priority over claim of State Welfare Board, for old age assistance furnished by Board to decedents. U. S. v. Kranich, D.C.N.D.1950, 92 F.Supp. 366.

Where taxpayer is insolvent and owes both municipal and federal taxes, and federal government has taken a lien prior to or as of same day as the state, county, or city, the federal lien comes first, but not before prior liens of the municipalities. U. S. v. O'Dell, D.C.Mich. 1945, 61 F.Supp. 966, affirmed 160 F.2d 304.

Under this section, priority exists in favor of the United States for payment of taxes, even as against liens of states or counties. U. S. v. Weisburn, D.C.Pa. 1943, 48 F.Supp. 393.

Claims of the United States against insolvent debtor for delinquent income taxes are prior to claim of city for delinquent personal property taxes. Foulke v. C. Pardee Works, D.C.N.J.1940, 35 F. Supp. 734.

Where Delaware corporation was insolvent and proceeds in hands of receivers were insufficient to pay preference claims, the claims of the United States for unpaid income taxes were entitled to priority over claims of New York for franchise taxes and license taxes. Churchill v. S. W. Straus Investing Corporation, D.C.Del.1938, 25 F.Supp. 316, affirmed 106 F.2d 210.

As respects priority between United States and state to taxes of insolvent taxpayer, court will take judicial notice of receivership proceedings as to date of receiver's appointment. Gerson, Beesley & Hampton, Inc. v. Shubert Theatre Corporation (D. C. N. Y. 1934) 7 F. Supp. 399.

Liens on corporation taxpayer's assets possessed by United States and state were inchoate or general only, and not perfected or specific, as respects priority of United States over state to taxes when taxpayer became insolvent. Id.

United States held entitled to priority for its 1926 taxes over state for its 1928 taxes from insolvent corporation's assets where state's lien which attached prior to United States lien was general and not specific. Id.

In case of insolvent taxpayer, United States has priority over state in collection of taxes, except where state's lien against taxpayer's property has become specific. Id.

Claim of United States for withholding and social security taxes, due from insolvent corporation, was entitled to priority over claim of Delaware Unemploy-

ment Compensation Commission for unpaid contributions and penalties, and United States was entitled to all proceeds from sale by receiver of corporation's property, including proceeds from sale of mortgaged personalty after settlement of mortgage less any unpaid costs. In re Mitchell's Restaurant, Del. Ch.1949, 67 A.2d 64, 31 Del.Ch. 121.

In proceeding for dissolution of corporation and appointment of receiver, federal taxes were entitled to priority over state taxes, under this section, except such taxes as were due under provisions of state Unemployment Compensation Act, Gen.Laws 1938, c. 284 et seq., enacted pursuant to provisions of Social Security Act, section 1001 et seq. of Title 42 and the latter taxes were entitled to be considered of equal rank wih social security taxes due the United States. Rivard v. Bijou Furniture Co., 1942, 27 A.2d 853, 68 R.I. 358.

In proceeding for dissolution of corporation and appointment of receiver, employee contributions collected by the corporation both under the state Unemployment Compensation Act, Gen.Laws 1938, c. 284 et seq., and Social Security Act, section 1001 et seq. of Title 42, constituted special "trust funds", and claim of the United States and of the state based on such contributions were required to be paid in full before other taxes, and balance in the hands of receiver was payable pro rata to satisfy claims of the United States for capital stock taxes and for employer contributions under Social Security Act, section 1101 et seq. of Title 42, and claim of the state for employer contributions under said state Unemployment Compensation Act. Id.

The state Unemployment Compensation Act, Gen.Laws 1938, c. 284 et seq., which was enacted pursuant to provisions of the Social Security Act, chapter 7 of Title 42, is in effect an integral part of said chapter and as such its revenue provisions for carrying out its purposes were intended by Congress to be on a par with revenue provisions of said chapter as respects priority of claims in proceeding to dissolve a corporation. Id.

Under this section providing that whenever any person indebted to the United States is insolvent, debts due to the United States shall be first satisfied, claim of the United States was entitled to preference over state and municipal taxes in distribution of an insolvent estate. Lerman v. Lincoln Novelty Co., 1941, 21 A.2d 827, 130 N.J.Eq. 144.

The use of word "contribution" instead of "tax" in Rhode Island Unemployment Compensation Act, Gen.Laws R.I.1938, c. 284, in referring to money paid by employer and employee to unemployment compensation fund, is not of controlling force in determining whether this section gives priority to claim of United States for taxes under section 1001 et seq. of Title 42 over claim of Rhode Island for contributions of employers and employees to state unemployment compensation fund under said Rhode Island Unemployment Compensation Act, but is a circumstance to be considered. Rivard v. Bijou Furniture Co., 1941, 21 A.2d 563, 67 R.I. 251, opinion conformed to 27 A.2d 853, 68 R.I. 358.

In proceeding for dissolution of corporation and appointment of receiver, claim of United States for taxes due United States under section 1001 et seq. of Title 42 had priority over claim of Rhode Island for corporate excess taxes and municipality's claim for taxes, in view of this section. Id.

This section did not give priority to claim of United States for taxes under section 1001 et seq. of this title over claim of Rhode Island for contributions of employers and employees to state unemployment compensation fund under Rhode Island Unemployment Compensation Act, Gen.Laws R.I.1938, c. 284, in proceeding for corporate dissolution and appointment of a receiver. Id.

In proceeding for corporate dissolution and appointment of a receiver, claim of United States for taxes under section 1001 et seq. of Title 42 was of equal dignity with claim of Rhode Island for contributions of employers and employees to Rhode Island unemployment compensation fund under Rhode Island Unemployment Compensation Act, Gen.Laws R.I. 1938, c. 284, and that portion of claim of United States and of Rhode Island representing contributions from employees should first be paid in full, and the balance, in so far as was permitted, should be paid pro rata in satisfaction of that portion of both federal and state claims representing contributions due from the employer. Id.

Where estate of decedent was insolvent, preference of claim of United States for income tax under this section was superior to common-law sovereign priority of claim of state of New York for state income taxes. In re Henke's Estate, 1948, 81 N.Y.S.2d 79, 193 Misc. 52.

The United States had priority for unpaid federal and estate taxes against balance remaining in hands of administratix of insolvent estate, notwithstanding unpaid claims of New York for income and estate taxes. In re Williams' Estate, 1947, 68 N.Y.S.2d 840, 189 Misc. 210.

Where husband and wife received state old age assistance and conveyed their real property to state in trust, and after husband's death, wife executed notes to F. H. A., and after her death executor sold property, claim of state because of old age assistance, was prior to claim of United States under F. H. A. notes, notwithstanding this section giving priority to debts due to the United States. In re Berger's Estate, Ohio Prob.1950, 94 N.E.2d 248.

Tax Law, § 219-c, giving State of New York a lien for unpaid franchise taxes upon corporate property did not entitle state which had assessed and liquidated franchise tax, but which had not seized the property, to priority for amount of tax over the unsatisfied claim of the United States for unpaid income taxes against property of taxpayer which had made a general assignment for benefit of creditors on theory that the lien of the state constituted an interest in the property of the debtor which was vested in the state before any assignment was made by the debtor, since the lien of the tax was not specific and therefore did not affect the priority of the United States. In re Lincoln Chair & Novelty Co., 1937, 9 N.E.2d 7, 274 N.Y. 353.

Right of United States to priority in payment of claim against insolvent corporation for income tax held superior to state's claim for franchise tax. West Coast Power Co. v. Southern Kansas Gas Co. (1934) 172 A. 414, 20 Del.Ch. 130.

Under this section and Rem.Rev.Stat. § 8370-203, giving the United States a lien for such debt, estate of insolvent debtor is liable first for debts due the United States and, in event there are insufficient assets of insolvent to satisfy claims for state taxes and lien of United States for federal taxes, claim of United States is entitled to be first paid in full, notwithstanding provision of state statute giving lien for state taxes priority over other liens. In re Dickson's Estate, 1938, 84 P.2d 661, 197 Wash. 145.

This section is not impaired by Rem. Rev.Stat. § 8370-203 providing that, in cases of insolvency, claim of state for taxes, increases and penalties thereon shall be lien prior to all other liens except prior tax liens. Id.

In action by mortgagee against distributor of motor fuel to foreclose mortgage where receiver was appointed for all of assets of distributor who was found to be insolvent and all the assets were liquidated and state of Texas and the United States intervened with claims for state and federal gasoline taxes, claim of the federal government had priority over the claim of the state government which in turn had priority over claim of party claiming under note and mortgage. State v. Nix, Tex.Civ.App. 1942, 159 S.W.2d 214, conforming to 62 S. Ct. 350, 314 U.S. 480, 86 L.Ed. 356.

The preferred lien on assets of insolvent refining company securing payment of state motor fuel taxes was superior to lien of federal government for gasoline taxes. State v. Wynne, 1939, 133 S. W.2d 951, 134 Tex. 455, appeal dismissed 60 S.Ct. 980, 310 U.S. 610, 84 L.Ed. 1388, rehearing denied 60 S.Ct. 1094, 310 U.S. 659, 84 L.Ed. 1422.

36½. —— Estoppel

Where receiver for taxpayer was appointed upon allegations of state's complaint, which included insolvency, and state admitted in its answer to federal government's intervening petition that taxpayer was insolvent, state was estopped to contest taxpayer's insolvency, so as to preclude the United States from claiming priority for federal insurance contribution taxes under this section by permitting the appointment of a receiver, notwithstanding ordinarily the doctrine of estoppel is not applied to states. People of State of Ill. ex rel. Gordon v. Campbell, Ill.1946, 67 S.Ct. 340, 329 U.S. 362, 91 L.Ed. 348.

37. —— Conveyances, assignments, and transfers

In suits involving disposition of securities deposited with state treasurer by insolvent surety company and claim of United States to priority, United States Supreme Court would accept as conclusive of facts trial court's finding that, by deposit, securities had been segregated from general assets of company before accrual of any liens of, or obligations to, United States. U. S. v. Knott (Fla.1936) 56 S.Ct. 902, 298 U.S. 544, 80 L.Ed. 1321, 104 A.L.R. 741.

In suits involving disposition of securities deposited with state treasurer by insolvent surety company and claim of United States to priority, United States Supreme Court would accept as conclusive Florida Supreme Court's decision that deposit constituted trust fund for benefit of Florida, its political subdivisions, citizens, and residents, and that United States was not a beneficiary, so far as it was a construction of state statute. Id.

Sole owner of insolvent corporation, who on dissolution thereof received portion of assets, held liable for taxes due from corporation, though he had paid assets received to corporation's creditors. Hutton v. Commissioner of Internal Revenue (C. C. A. 1932) 59 F.(2d) 66.

A bona fide transfer, pledge, or mortgage of property, or levy of execution against it effected before right of preference of United States attaches, removes such property from effect of such right of preference. U. S. v. Sullivan (D.C.N.Y.1937) 19 F.Supp. 695, affirmed 95 F.2d 1021.

38. —— Mortgages

Priority claims of United States are subordinate to the lien of a mortgage which has attached before the indebtedness to the government accrues. U. S. v. Guaranty Trust Co. of New York (C. C. A. Minn. 1929) 33 F.(2d) 533, affirmed 50 S.Ct. 212, 280 U.S. 478, 74 L.Ed. 556.

Claim of United States, based on fine imposed on railroad, against funds in possession of trustee derived from sale of mortgaged property, was subordinate to claims of mortgage bondholders, where mortgage was executed before imposition of fine. Guaranty Trust Co. of New York v. Pacific & I. N. Ry. Co. (D.C.Idaho 1937) 17 F.Supp. 646.

A federal tax lien on all real and personal property of insolvent partnership in receiver's hands for unpaid income taxes was subordinate to chattel mortgages securing partners' payment of purchase prices of machinery covered thereby and to special and general liens of all judgment creditors of partnership. National Sur. Corp., York Mills v. Sharpe, N.C.1952, 72 S.E.2d 109.

A creditor, taking chattel mortgage from debtor as security for payment of debt and causing registration of mortgage in county wherein debtor resides or mortgaged property of debtor residing outside state is situated, acquires property rights which entitle him to sell mortgaged property for satisfaction of debt and are tantamount to specific lien on specific property within this section giving debts to United States priority over other debts in distribution of insolvent debtor's assets. Id.

38½. —— Insurance policy holders

Under Act No. 169 of 1908, § 4, requiring life insurance company to deposit securities with state treasurer to qualify in state and providing that qualifying securities shall be held in trust for benefit of policyholders, claim of policyholders to proceeds of the securities upon company becoming insolvent prevailed over claim of United States based on amount due it as social security taxes and income taxes. Conway v. Imperial Life Ins. Co., 1945, 21 So.2d 151, 207 La. 285.

39. —— Liens

A lien, in order to be a "specific lien" so as to give rise to contention that specific lien is impliedly excepted from this section providing that debts due United States shall be first satisfied in case of insolvent debtors, on theory that United States had no claim against property no longer in possession of debtor, must be attached to certain property by reducing it to possession. U. S. v. Gilbert Associates, Inc., N.H.1953, 73 S.Ct. 701.

The lien of the state of Illinois for unemployment compensation taxes did not become specific and perfected when notice of lien had been filed and recorded and when receiver had been appointed, so as to defeat priority of the United States for federal insurance contribution taxes, even if such priority could be defeated by specific and perfected liens, since the lien must attach to specific property of debtor, and at time of appointment of receiver not only was property not in hands of bailiff but amount or type of property belonging to taxpayer was not known to the state. People of State of Ill. ex rel. Gordon v. Campbell, Ill.1946, 67 S.Ct. 340, 329 U.S. 362, 91 L.Ed. 348.

A landlord's lien for rent under Code Va.1936, §§ 5519, 5523, 5524, enforcement of which was not sought until after tenant executed assignment for benefit of creditors, was not such a specific and perfected lien on day of assignment as to give lien priority over debts due the United States. U. S. v. Waddill, Holland & Flinn, Va.1945, 65 S.Ct. 304, 323 U.S. 353, 89 L.Ed. 294.

State court's determination as to nature and extent of lien created by state statute is binding as a matter of state law, but whether such lien is sufficiently specific and perfected to displace the priority given claims of the United States by act of Congress is a matter of federal law. Id.

In order for a lien to be prior to claims of United States, the lien must be definite as to the identity of the lienor, as to the amount of the lien, and as to the property to which it attaches. U. S. v. Division of Labor Law Enforcement, Dept. of Indus. Relations, Cal., C.A.Cal. 1953, 201 F.2d 857.

An inchoate lien is insufficient to defeat priority granted to the United States under this section in case of voluntary assignment of property of debtor who has insufficient property to pay all of his debts. People of New York v. U. S., C.C.A.Del.1939, 106 F.2d 210.

This section which provides that debts owed United States by insolvent debtor shall first be satisfied out of debtor's assets is applicable only between two creditors of equal standing, and did not establish priority of government which had not perfected a lien over bonding company which held lien dating back to time of filing of bill to set aside the fraudulent conveyance. Fidelity & Deposit Co. of Md. v. Lovell, D.C.Miss.1952, 108 F. Supp. 360.

The surety on payment bond of contractor did not, by reason of having paid claims of laborers and materialmen, and having completed contractor's contract with the government, and having received an assignment from contractor, acquire an equitable lien on retained percentage of contract price in hands of government, superior to section 191 of Title 31, right of preference or priority for taxes due the government from contractor, who had made an assignment for benefit of creditors. Seaboard Surety Co. v. U. S., Ct.Cl.1946, 67 F.Supp. 969, 107 Ct.Cl. 34, certiorari denied 67 S.Ct. 863, 330 U.S. 826, 91 L.Ed. 1275.

In action to foreclose mortgage on real property, general lien for taxes due United States was not entitled to priority over perfected municipal liens for taxes and water rates assessed against property in question. Brown v. General Laundry Service, 1952, 94 A.2d 10, 139 Conn. 363.

In receivership proceedings against an insolvent tenant, claims of the United States and wage claimants and of the commonwealth were prior in preference to landlords' claim for rent accruing prior to receivership where fund in receiver's hands was derived from sale of tenant's chattels on leased premises which were liable to distress by landlords for rent when receiver entered into possession of premises, and no distress for rent had been made. Globe Solvents v. Nouskhajian, 1942, 25 A.2d 595, 148 Pa. Super. 209.

On insolvency of corporate lessee, under statute, N.J.S.A. 2:60-229, providing that landlord shall be entitled to lien on machinery and other chattels to the extent of tenant's interest therein for amount of unpaid rent from the date the rent is unpaid and that the lien shall have priority over incumbrances created or acquired after machinery or other chattels are placed in the premises, right of landlord lacks characteristics of a specific perfected lien which alone bars priority of United States in distribution of an insolvent estate and the debt due the United States is entitled to priority over landlord's lien. Lerman v. Lincoln Novelty Co., 1941, 21 A.2d 827, 130 N.J.Eq. 144.

The lien acquired by insolvent contractor's judgment creditor by service of third party subpoena on building owner owing money to contractor was subordinate to prior claims of the United States for income and excess profits taxes and taxes due under Federal Insurance Contributions Act, sections 1400-1403, 1410, 1411, 1420-1432 of Title 26, of the state of New York for franchise and unemployment insurance taxes and of the city of New York for emergency revenue taxes. Ratner-Stanhope Corporation v. Rosen, Misc.1944, 49 N.Y.S.2d 750.

If priority of debts due the United States from debtor is to be defeated by other liens, such other liens must be definite, and not merely ascertainable in future, in at least three respects as of the crucial time, namely, identity of the lienor, amount of lien, and property to which it attaches. In re Berger's Estate, Ohio Prob.1950, 94 N.E.2d 248.

Trust company which was assignee for security of assignment purporting to give company power to sell the seat of assignor on the New York Stock Exchange with or without notice to assignor had right to proceeds of seat when they became available, when sold by Exchange after death of assignor, and had an inchoate equitable lien on the proceeds which did not become perfected until the claims of the Exchange and its members were satisfied but lien did not relate back, so as to have priority over United States government's statutory right to have income taxes due it paid first. In re Gruner, 1946, 68 N.E.2d 514, 295 N.Y. 510, 167 A.L.R. 628, reargument denied 69 N.E.2d 822, 296 N.Y. 668, 167 A.L.R. 628.

The lien of a judgment is not such a specific lien as would deprive the United States of its priority under this section. Id.

The priority of payment of debts due United States is not destroyed by state recording acts any more than by state statutes creating or otherwise affecting liens, if lien as recorded or otherwise executed does not have required degree of specificity and perfection, and test is not simply whether by his taking further steps lienor's rights will be enforced against others than the government. In re Brumer, Wis.1948, 31 N.W.2d 599.

The lien under Wis.St.1945, § 74.76 in favor of Industrial Commission against debtor for unpaid unemployment compensation taxes, in absence of something amounting to a sequestration of the property against which lien was sought to be enforced, was not sufficiently specific and perfect to defeat rights of United States under a subsequently recorded tax claim against debtor, so that upon debtor's assignment for benefit of creditors, United States had prior right to satisfaction of its claim from assets available for distribution to creditors. Id.

Under this section requiring any debts due the United States to be first satisfied whenever a person is insolvent, a claim of the United States for taxes, penalties and interests, had priority over claim of county for personal property taxes against assets of an insolvent, where the personal property tax had not become a specific lien prior to the insolvency of the debtor. Palace Fish & Oyster Co. v. Bean, 1948, 200 P.2d 753, 32 Wash.2d 56.

The priority of debts due the United States in event of insolvency of debtor or assignment for benefit of his creditors is subordinate to a mortgage lien but is superior to an inchoate general lien and lien of a general judgment unless execution of judgment has proceeded far enough to take land out of possession of

debtor. Spokane Merchants' Ass'n v. State, 1942, 130 P.2d 373, 15 Wash.2d 186.

In controversies between the United States and a state over priority of claims against estate of an insolvent debtor for taxes, the priority given the United States by this section is superior unless state taxes have become a specific lien prior to insolvency of debtor. Id.

A mere statutory declaration by a state relating to tax liens does not create a "specific lien" which will defeat the prior right of the United States to payments of debts due it by an insolvent debtor. Id.

Under Rem.Rev.Stat. § 8370-202 providing for collection of delinquent taxes by issuance of state warrants declared to constitute a lien on taxpayer's interest in real and personal property and to be enforceable as a judgment, state by merely filing warrant acquired an "inchoate general lien" which was equivalent to a "judgment lien" and it could only become a "specific lien" by distraint or levy of execution and it was inferior to the priority right of the United States for debts due it by an insolvent debtor. Id.

Under this section granting priority to debts due United States, if before priority attaches a creditor acquires a specific and perfected lien on property of insolvent debtor, his estate is diminished to extent of claims secured by such lien, and government's right attaches to the residue. Id.

The provision of this section, that lien for unpaid federal taxes is invalid against mortgagee, pledgee, purchaser or judgment creditor until notice of lien is filed by internal revenue collector in office specified by state law or office of federal district court clerk impliedly amended pro tanto statutory provision giving debts due United States priority over other debts in distribution of insolvent debtor's assets, so that United States has no priority in distribution of assets of insolvent federal tax debtor over docketed judgment liens or recorded mortgages antedating the filing of notice of tax liens. National Sur. Corp., York Mills v. Sharpe, N.C.1952, 72 S.E.2d 109.

The statutory priority of United States in payment of debts due it from insolvent person out of his property in receiver's hands arises on receiver's appointment, so that this section does not give United States priority over bona fide conveyance made by debtor before receivership, nor over a prior specific lien embracing specific property of debtor, as distinguished from general lien covering all his property. Id.

Where debts due the United States by an insolvent company were claimed before adjudication and ascertainment of work and labor liens, the work and labor liens were not specific enough to take priority over debts due United States. Sturgill v. Lovell Lumber Co., W.Va.1951, 67 S.E.2d 321.

A state's claim of a lien for taxes is specific and perfected within this section fixing priority of liens, if amount has been fixed by a proceeding which is conclusive at date of receivership, and is not subject to change in any subsequent proceeding, and lien is not dependent upon any contingency, nor subject to selection, shift or change, and nothing remains to be done to make lien complete, specific or perfect, or to liquidate debt, except full payment. State v. Woodroof, 1950, 46 So.2d 553, 253 Ala. 620.

Where there was no assessment for amount of state sales tax, affidavit by chief accountant that such amount was correct, due and unpaid was not sufficient to fix a specific and perfected lien sufficient to give state a prior claim to that of United States for withholding and employment taxes. Id.

Where state did not make any assessment of income tax of insolvent corporation, and any payment was subject to a refund within two years if erroneous, return of corporation was only prima facie the correct amount of its liability, and state's lien therefor was not specific and perfected and entitled to priority over claims of United States for withholding and employment taxes. Id.

Where there was no evidence of state's claim for franchise tax and permit fee of insolvent corporation, except affidavit of record clerk of franchise tax division of department of revenue that such amount was correct, due and unpaid after allowing all credits, claim was not a specific and perfected lien and not entitled to priority over claim against corporation by United States for withholding and employment taxes. Id.

This section providing for priority of payment of debts due United States establishes priority only in the particular state of things therein specified and does not establish priority of income tax liens over prior attachment lien in absence of insolvency proceedings, voluntary assignment of debtor's property or transfer of debtor's assets to any person for application to payment of his debts. Board of Sup'rs of La. State University v. Hart, 1946, 26 So.2d 361, 210 La. 78, 174 A.L.R. 1366.

Where landlord took no measures to fix or foreclose lien under Vernon's Ann. Civ.St. Art. 5238 for rent before institution of receivership suit against insolvent tenant, such lien was neither specific nor perfected, and United States was entitled to priority in payment of its claims against tenant for federal income, withholding, employment, and insurance contributions taxes. U. S. v. Scott & Gregg Real Estate Co., Tex.Civ.App.1950, 229 S.W.2d 888.

In action by mortgagee against distributor of motor fuel to foreclose mortgage where receiver was appointed for all of assets of distributor who was found to be insolvent and all the assets were liquidated and state of Texas and the United States intervened with claims for state and federal gasoline taxes, claim of the federal government had priority over the claim of the state government which in turn had priority over claim of party claiming under note and mortgage. State v. Nix, Tex.Civ.App.1942, 159 S.W.2d 214, conforming to 62 S.Ct. 350, 314 U.S. 480, 86 L.Ed. 356.

The United States has priority over any and all debts or other claims whose priority is based solely on a state statute that does not create a completed and perfected lien before insolvency intervenes. Emory v. St. James Distillery, Mo.App.1940, 143 S.W.2d 318, certiorari granted 61 S.Ct. 836, 313 U.S. 552, 85 L.Ed. 1515, reversed on other grounds 62 S.Ct. 317, 314 U.S. 423, 86 L.Ed. 315.

A mere inchoate lien is not enough to defeat the priority granted United States by this section as a creditor generally. Id.

39½. —— Pledges

Pledged property is subject to government lien for taxes of pledgor only to the extent of pledgor's equity in such property. In re Decker's Estate, 1946, 49 A.2d 714, 355 Pa. 331, 476, certiorari denied 67 S.Ct. 1190, 331 U.S. 807, 91 L.Ed. 1828.

Pledgees of stock had a claim against proceeds of stock superior to claim of Federal Government for unpaid income and estate taxes of deceased pledgor where deceased's estate was insolvent, notwithstanding government lien for es-

tate taxes upon deceased's gross estate. Id.

40. —— Claims for labor or material

Under this section providing that whenever any person indebted to the United States is insolvent, debts due to the United States shall be first satisfied and N.J.S.A. 14:14-21, providing that laborers shall have a lien for wages upon the assets of an insolvent corporation, laborer's claim is not a true "lien" but only a right to preference in payment out of funds that come into the hands of receiver, and the United States must be paid ahead of wage claimants. Lerman v. Lincoln Novelty Co., 1941, 21 A.2d 827, 130 N.J.Eq. 144.

A claimant who duly qualified for preference under statute dealing with laborer's lien on property, franchises, etc., and statute providing how claims are to be paid by a receiver or assignee, and who asserted priority under those statutes for labor performed for insolvent corporation, was entitled to priority over any claim of priority asserted by the United States for social security and income taxes under this section. Ernst v. Guarantee Millwork, 1939, 93 P.2d 404, 200 Wash. 195.

The intent of Congress with reference to priority of labor claims is not to be determined solely from this section, but is to be determined from section 104 of Title 11, Bankruptcy, and from other acts of Congress relating to same subject. Emory v. St. James Distillery, Mo. App.1940, 143 S.W.2d 318, certiorari granted 61 S.Ct. 836, 313 U.S. 552, 85 L.Ed. 1515, reversed on other grounds 62 S.Ct. 317, 314 U.S. 423, 86 L.Ed. 315.

40½. —— Damages for breach of contract

Where contract for supplies to War Department provided that as liquidated damages for delay, contractor would pay one-half of one per cent. of price for each day's delay, and government reserved right to terminate contract and purchase similar material in open market, charging against contractor the excess cost together with liquidated damages accruing until government procured similiar material, upon termination of contract for delay, government could recover the excess cost upon purchase elsewhere and the per diem damages for delay. Avey v. Leather Products Co., 1943, 55 N.E.2d 813, 73 Ohio App. 245.

41. —— Execution, attachment, or other process

Where estate was insolvent, and there was no realty and no execution had been levied on personalty, preference of claim of the United States under this section for income taxes was superior to claim of a judgment creditor. In re Henke's Estate, 1948, 81 N.Y.S.2d 79, 193 Misc. 52.

41½. —— Trust funds

Where, at the request of an authorized attorney in certain Indian claims cases then pending in the Court of Claims, plaintiff agreed to print, and did print, the brief in each said case; and where in accordance with a long existing custom in respect of such matters, the said attorney requested plaintiff to deliver to him, and plaintiff did so deliver, receipted bills for voucher purposes only, upon the understanding and agreement that said attorney would collect said funds as funds of the plaintiff and would deliver to plaintiff the Government's check, duly endorsed; and where said receipted bills were duly approved for payment by the Department of the Interior according to law, and duly transmitted by said Department to the Comptroller General for payment; and where, meanwhile, said attorney died; and where thereupon, the Comptroller General withheld payment of said funds and proceeded to offset same against certain unpaid income taxes due and owing to the Government by said deceased attorney; said funds in truth and fact belonged to plaintiff and said attorney and his estate had no interest therein except as trustee for plaintiff. Batavia Times Publishing Co. v. U. S., 1942, 96 Ct.Cl. 166.

42½. Trusts

This section has no application where by operation of law a trust resulted without there being any assignment or transfer. Batavia Times Publishing Company v. U. S., 1942, 96 Ct.Cl. 166.

44. Loss or waiver of priority

Where at time of depositor's death bank held depositor's demand note in amount in excess of deposit, act of bank in crediting interest on depositor's checking account for a period of approximately one year after death did not constitute a "waiver" or "estoppel" of bank's right of set-off as against claim of the United States to priority as a creditor where the United States failed to show that bank knew of estate's insolvency, and if so, when such knowledge was acquired, or that the United States had been prejudiced by any act of the bank in its dealings with the legal representative of the estate. In re Dimon's Estate, Misc.1941, 32 N.Y.S.2d 239.

45. Decree as bar

Where only additional allegation in second suit by United States to sustain preference right to funds of insolvent bank was legal conclusion that bank committed act of bankruptcy, decree in first suit barred second suit. U. S. ex rel. Ray v. Porter (D. C. Idaho, 1927) 24 F.(2d) 137.

Where the government has a claim against an insolvent decedent's estate or against any fund being administered in a state tribunal, it may content itself with notifying the administrator of the existence of the claim, and then rely on this section giving priority to the United States in payment of claims against an insolvent debtor, or it may appear in state tribunal and prosecute its claim as any other litigant in that tribunal, and, if it adopts the latter course, it is bound by state court's decision. U. S. v. Muntzing, D.C.W.Va.1946, 69 F.Supp. 503.

The United States, in exercise of its delegated powers, is not subject to judicial decrees or to legislative enactments of any state except of its own volition, so that, though state court distributes funds of insolvent corporation to exclusion of federal government as a claimant for freight accruing to it while operating railroads, under this section and section 192 of this title, the assignee for benefit of creditors of corporation would remain personally liable. In re Farmers' Co-op. Co. (1925) 206 N. W. 251, 200 Iowa, 1160.

46. Proceedings to enforce

An action in court of law on administrator's bond is not sustainable until probate court has adjusted accounts of administrator and has ordered him to pay over amounts found to be in his hands. U. S. v. Giger, D.C.Ark.1939, 26 F.Supp. 624.

Even if sureties on administrator's bond were liable to the United States for an amount owed by decedent to the United States, because administrator paid debts owed to third parties before paying debt owed to the United States, action against the sureties, which was brought before probate court adjusted accounts of administrator and ordered him to pay over amount found to be in his hands, was premature. Id.

46½. Enjoining prior payments to others

United States, having priority in state bank's funds, is entitled to injunction preventing state officer, liquidating bank from making any payments until United States is paid. U. S. ex rel. Ray v. Porter (D. C. Idaho, 1927) 24 F.(2d) 139.

47. Jurisdiction of courts

Controversy between state receiver and one claiming preference held not within original jurisdiction of federal District Court, and hence not removable. Mullendore v. American Surety Co. of New York (C. C. A. Mont. 1928) 27 F.(2d) 572, certiorari denied 49 S.Ct. 178, 278 U.S. 653, 73 L.Ed. 653.

Federal court has jurisdiction of suits by sureties on insolvent state bank's bonds as depository of bankrupt's funds to establish preferred claims thereto. Union Indemnity Co. v. Florida Bank & Trust Co., D.C.Fla.1931, 48 F.2d 595, reversed on other grounds 55 F.2d 640, certiorari denied 53 S.Ct. 6, 287 U.S. 600, 77 L.Ed. 522.

If United States asserts claim against insolvent bank under state and federal statutes, granting priority, it may have question reviewed by United States Supreme Court. People's Trust Co. v. U. S. (C. C. A. N. H. 1928) 23 F.(2d) 381.

State court proceedings for liquidation of insolvent bank, and intervention of United States therein to establish claim, held in rem, precluding subsequent exercise of jurisdiction by federal court. Id.

Where the administrator cum testamento annexo listed as an asset and charged himself with a bank account and objections filed by bank to intermediate account alleged that bank account was improperly included as an asset of the estate on ground that claim for credit deprived bank of its right of set-off against bank account of decedent and the United States objected to failure of administrator cum testamento annexo to account for interest on the deposit, the Surrogate's Court had jurisdiction to pass upon respective rights of the bank and of the United States in and to the bank account. In re Dimon's Estate, Misc.1941, 32 N.Y.S.2d 239.

48. Review

United States was not precluded from review of judgment denying it priority for debts due it as to securities deposited with state treasurer by insolvent surety company, on ground that it was not adversely affected, because entitled to be paid from surplus, where no order was entered directing payment of surplus to United States after payment of state creditors and it was not clear that surplus would satisfy claim of United States. U. S. v. Knott (Fla.1936) 56 S.Ct. 902, 298 U.S. 544, 80 L.Ed. 1321, 104 A.L.R. 741.

United States Supreme Court held not without jurisdiction, on certiorari to State Supreme Court to review judgment denying United States priority for debts due it, on ground that former order which was not appealed from, and not order from which appeal was taken to State Supreme Court, was a final order, since judgment of State Supreme Court denying priority to United States constituted "final judgment" governing jurisdiction of United States Supreme Court. Id.

§ 192. Liability of fiduciaries

Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid. (As amended May 10, 1934, 11:40 a. m., c. 277, § 518 (a), 48 Stat. 760.)

Subsection (b) of section 518 of Act May 10, 1934, cited to the text, provided that the amendment made by subsection (a) shall be applicable in the case of payments made after June 6, 1932.

Assessment and collection of liability under this section for failure to pay income tax, see section 311 of Title 26, Internal Revenue Code.

½. In general

This section is in pari materia with section 191 of this title. It has no application to a payment of a debt in due course by one not a fiduciary and creates no lien either present or continuing. U. S. v. Western Union Telegraph Co. (C. C. A. N. Y.1931) 50 F.2d 102.

This section should be construed in pari materia with section 191 of this title. Hatch v. Morosco Holding Co., Inc. (D. C.N.Y.1932) 56 F.2d 640, affirmed without reference to this point 61 F.2d 944, certiorari denied 53 S.Ct. 404, 288 U.S. 613, 77 L.Ed. 986.

This section and section 191 of this title were required to be construed together. U. S. v. Giger, D.C.Ark.1939, 26 F.Supp. 624.

1. Priority in general

Under Title 11 § 104, trustee in bankruptcy held not personally liable for state taxes owed by bankrupt, though estate contained sufficient funds to pay tax and was distributed in due course to others, and trustee did not send creditors' notice to state nor obtain order directing state to present its claim within specific time, in absence of showing that trustee had knowledge of unpaid tax prior to distribution as distinguished from liability for Federal taxes under Title 31 § 192. State of Delaware v. Irving Trust Co. (D.C.N.Y.1937) 19 F.Supp. 231.

Where claim allowed against estate was to be paid only when and as funds were available for that purpose and where amount of estate taxes had not been determined, creditor was not entitled to payment of claim. In re Bates' Will, 1938, 8 N.Y.S.2d 548, 255 App.Div. 615, reversing, In re Bates' Estate, 4 N. Y.S.2d 444, 167 Misc. 641, and reargument denied. In re Bates' Will, 1939, 11 N.Y.S. 2d 416, 256 App.Div. 669, motion denied 22 N.E.2d 487, 281 N.Y. 664.

2. Assignees and trustees

Duty of trustee in bankruptcy to satisfy claims for federal taxes is a qualified one, applicable only where trustee is on notice of existence of taxes. State of Delaware v. Irving Trust Co., C.C.A. N.Y.1937, 92 F.2d 17, certiorari denied 58 S.Ct. 283, 302 U.S. 754, 82 L.Ed. 583.

As tax claims of United States have priority over wage claims against tax debtor, assignee for benefit of such debtor's creditors should not be ordered to make such payment of wage claims as might impose liability on assignee to pay such tax claims of which he has notice, but payment of wage claims should not be postponed indefinitely or for unreasonable time. In re Joseph De Rario,

Inc., 1943, 43 N.Y.S.2d 918, 182 Misc. 427.

Though state court distributes funds of insolvent corporation to exclusion of federal government as a claimant for freight accruing to it while operating railroads, under this section and section 191 of this title, the assignee for benefit of creditors of corporation would remain personally liable. In re Farmers' Co-op. Co. (1925) 206 N. W. 251, 200 Iowa, 1160.

Petitioner, one of several resident trustees of two trusts established by a nonresident alien for the benefit of his divorced wife and minor children, was not liable as a fiduciary under this section for any liability of the nonresident alien for tax upon any portion of the income of the trusts. Fitzgerald v. C. I. R., 1944, 4 T.C. 494.

Where petitioner, who took possession of assets of estate for benefit of creditors, received notice of claim for income taxes but did not pay them could not escape liability under this section because the only asset of the estate, cash, was taken by sheriff on an execution under a judgment previously obtained by a creditor against taxpayer. Northwestern Jobbers Credit Bureau v. C. I. R., 1943, 1 T.C. 863.

Trustee of bankrupt, which distributed assets of bankrupt without first providing for payment of debt due United States, is not personally liable under section 280 (a) (2) of Revenue Act of 1926 and this section where it appears that trustee was not chargeable with knowledge of debt. Irving Trust Co. v. C. I. R., 1937, 36 B.T.A. 146.

3. Executors and administrators

Under this section, administratrix of estate of deceased veteran who rejected claim of United States for over-payments of disability compensation made to veteran during his lifetime and became personally liable for money due United States. U. S. v. Gibson, D.C.Idaho 1951, 101 F.Supp. 225.

Where Federal Government, though failing to file claim against decedent's estate with probate court within statutory period provided by state law, did serve notice thereof on administrator at time when administrator had sufficient moneys in his hands to pay the claim, administrator, upon thereafter paying out moneys in his hands to nonpriority creditors, could himself be held responsible for Government's claim if established. U. S. v. Luce, D.C.Minn. 1948, 78 F.Supp. 241.

Federal Government would not be denied judgment against administrator of decedent's estate for money loaned to decedent during lifetime on ground that it would have effect of making administrator individually liable for debts of another, where it appeared that administrator had on hand sufficient funds of estate to pay Government's claim with interest and costs.. U. S. v. Swanson, D.C.Neb.1947, 75 F.Supp. 118, appeal dismissed 171 F.2d 718.

Executor of deceased taxpayer who prosecuted litigation in which decedent's income tax deficiency was finally determined, and who presented to commissioner an offer of compromise, was estopped to question his own lack of authority to agree to waive period of limitation for assessment and collection of taxes, and was directly liable to federal government for his devastavit in distributing estate assets before discharging decedent's income tax obligation. U. S. v. Fisher, D.C.Mich.1944, 57 F.Supp. 410.

The United States may recover from executrix for income taxes assessed against decedent. U. S. v. Weisburn, D.C. Pa.1943, 48 F.Supp. 393.

A taxpayer's executrix was personally liable to the United States for amounts paid on debts of taxpayer's estate over which the debts due the United States for income tax assessments had priority. Id.

The United States had priority against Pennsylvania taxpayer's estate for balance due under income tax assessments except as to payments which executrix made for administrative and funeral expenses and for headstone. Id.

The government could have held aloof from probate proceedings in state court and could have given administrator notice of government's claim and then the administrator, at his peril, would have been bound to see that the priority rights of the government were fully protected. U. S. v. Pate, D.C.Ark.1942, 47 F.Supp. 965.

Where government permitted probate court judgment allowing government's claim as third class claim to become final, the government could not hold former administrator personally liable for unpaid balance of claim under this section. Id.

Where government permitted probate court judgment allowing government's claim as a third class claim to become final, the government could not hold former administrator of the estate personally liable for unpaid balance of claim on theory that he was trustee and was under duty to appeal from the judgment, since the administrator was trustee for all the creditors and it was the duty of government if it felt aggrieved to appeal. Id.

The alleged failure of agents of government to exercise reasonable diligence to collect estate tax deficiency out of assets of estate in hands of widow to whom administrator had distributed assets of estate, or to enforce liability of widow as transferee, would not prevent government from recovering tax from administrator, since defense of laches or equitable estoppel is not available against United States suing to enforce a public right or to protect a public interest. U. S. v. First Huntington Nat. Bank, D.C.W.Va.1940, 34 F. Supp. 578, affirmed 117 F.2d 376.

Revenue Act 1926, §§ 311, 316, providing summary method of enforcing personal liability of administrator for estate tax under this section, by notice to administrator with opportunity to pay and sue for refund or to be heard before Board of Tax Appeals with right to appeal to courts, did not create new obligation, but merely provided new remedy for enforcing an existing obligation. Id.

The government's action against administrator to enforce administrator's personal liability for estate tax under this section, could be commenced within six years of government's assessment of tax against estate under Revenue Act 1926, § 311(b). Id.

The remedy provided by Revenue Act of 1926, § 316, for assessment directly against administrator for personal liability for estate tax under this section, and for assessment against administrator upon his existing liability at law or equity, was not exclusive but cumulative, and government could still exercise its old remedy of proceeding in court against administrator without previous assessment against him. Id.

The United States could not recover, from administrators of a decedent's estate, an amount owed to the United States by decedent, under this section and section 191 of this title in absence of allegation of insufficiency of assets of estate to pay decedent's debts. U. S. v. Giger, D.C.Ark.1939, 26 F.Supp. 624.

This section and section 191 of this title giving priority to claims of United States against deceased or insolvent debtors apply only where debtor's estate has passed to administrator or assignee for benefit of creditors, not to transfers to creditors in satisfaction of debts. U. S. v. Sullivan, D.C.N.Y.1937, 19 F.Supp. 695, affirmed 95 F.2d 1021.

Surrogate's Court Act N.Y. § 212, establishing order of payment of deceased's debts applies only to funds in hands of executor or administrator and does not extend application of federal statute giving priority to debts due United States. Id.

Motion for substitution of parties denied under this section, which provides for the personal liability of executors for debts due the United States from the estate. 9 B. T. A. 419.

Generally, executor distributing estate without paying estate tax becomes personally liable therefor. U. S. v. Cruikshank (D. C. N. Y. 1931) 48 F.(2d) 352.

For purpose of federal taxation, executor or administrator does not stand in decedent's shoes and is more than mere trustee, and, under statute, is personally liable for payment of tax due from decedent or estate. Anderson v. U. S., 1936, 15 F.Supp. 216, 83 Ct.Cl. 561, certiorari denied 57 S.Ct. 668, 300 U.S. 675, 81 L.Ed. 880.

Where testator's children were responsible for payment of federal estate tax as executors and transferees of property on which deficiency assessment was based, insofar as the children paid tax over and above their respective interest in the estate they did so as "fiduciaries" within 20 P.S. § 844(a, b); 72 P.S. § 2303, entitling them to obtain proration of tax, even though they used their own funds in making payment. In re Mellon's Estate, 1943, 32 A.2d 749, 347 Pa. 520.

Executors, by making settlements of claims against decedent's estate, did not incur personal liability to federal government for income taxes which thereafter accrued upon sale of securities held by a secured creditor of decedent upon showing that estate was insufficient to pay so-called income tax liability. In re Levy's Estate, Misc.1947, 70 N.Y.S.2d 72.

Taxpayers were not liable as fiduciaries under this section, where they did not use assets of the taxpayer to pay its debts. Leuthesser v. C. I. R., 1952, 18 T.C. 1112.

No issue arose in tax proceeding with respect to the liability of the administrator as a fiduciary under this section, in the absence of a deficiency notice addressed to him personally. Estate of McKnight v. C. I. R., 1947, 8 T.C. 871.

An individual who had been an administrator and had paid the other debts of the estate without satisfying the estate's debt for income tax due to the United States was, despite his discharge by the probate court, liable in his own person and estate to the extent of such unpaid tax, under this section and Revenue Act of 1934, section 311 (a) (2). Beasley v. C. I. R., 1940, 42 B.T.A. 275.

Where administratrix of estate pays other debts of decedent besides income tax liability of decedent for 1925, of which she had knowledge and thereafter distributes estate to persons entitled to receive same, she is personally liable for debt owed United States under this section. Morris v. C. I. R., 1937, 36 B.T.A. 516.

In a proceeding brought by the executor, in his representative capacity, to contest a deficiency in estate tax, the Board may not consider whether he is personally answerable under this section. Safe Deposit and Trust Company of Baltimore v. C. I. R., 1937, 35 B.T.A. 259, affirmed 95 F.2d 806.

That estate has been administered and administratrix discharged does not defeat right of Government to collect income tax due upon income received by decedent prior to his death. 12 B.T.A. 334; U. S. v. Weisburn, D.C.Pa.1943, 48 F.Supp. 393.

See, also, annotation under section 500 of title 26.

4. Receivers

Claims against receiver for federal taxes for unemployment insurance and old age benefits and for state personal property taxes, all of which taxes accrued during course of receivership, were entitled to priority over laborers' claims for wages earned during the receivership. Parks v. Central Door & Lumber Co., 1940, 102 P.2d 706, 164 Or. 363, 128 A.L.R. 375.

4½. Trustee in bankruptcy

Where judgment debt due United States was duly scheduled by bankrupt as claim entitled to priority, bankruptcy trustee who without obtaining "bar order" against United States which held judgment for breach of contract against bankrupt, distributed estate to general creditors, held personally liable to United States, though latter filed no claim in the bankruptcy proceeding. U. S. v. Kaplan, C.C.A.N.Y.1935, 74 F.2d 664.

8. Estoppel to assert liability

Under Arkansas law, Acts 1939, Act 164, where the government had six months within which to appeal from judgment of probate court allowing government's claim as claim of third class, but failed to do so, at expiration of such period the judgment became a "final judgment" binding upon the government. U. S. v. Pate, D.C.Ark.1942, 47 F.Supp. 965.

Where the government voluntarily and of its own initiative filed its claim against deceased's estate in state probate court, the government thereby became a "party" to the proceeding and was bound by judgment of the probate court. Id.

9. Lien of government

Where a corporation leased its property to another for a rental to be paid to the stockholders of the lessor, the government has no lien on the rental for taxes due from the lessor, and cannot hold the lessee liable under this section for paying to the stockholders. U. S. v. Western Union Telegraph Co. (C. C. A. N. Y. 1931) 50 F.2d 102.

10. State officer liquidating insolvent bank

United States held entitled to personal judgment against state officer liquidating insolvent bank and paying other creditors in preference to United States, if funds are insufficient to pay claim of United States. U. S. ex rel. Ray v. Porter (D. C. Idaho, 1927) 24 F.(2d) 139.

11. Valid prior liens, payment of

Taxpayer is not liable under section 311 (a) (2) of the Revenue Act of 1928 and this section for payment of debts of a decedent in disregard of the Government's priority in respect of claims for income taxes against the decedent, where the obligations so discharged constituted valid prior liens. Union Guardian Trust Co. v. C. I. R., 1940, 41 B.T.A. 1306.

12. Laches and limitations

The remedy provided by section 311 of Title 26 for collection of taxes from transferees and fiduciaries is alternative and not exclusive and the limitation therein provided has application to such alternative remedy and not to the old remedy under other statutes. U. S. v. Motsinger, C.C.A.N.C.1941, 123 F.2d 585.

A suit to hold a fiduciary liable in his own person and estate for a tax due the United States is a "proceeding in

court" to collect the tax, which under section 276 of Title 26 may be maintained only if commenced within six years after assessment of the tax. U. S. v. Motsinger, C.C.A.N.C.1941, 123 F.2d 585; U. S. v. Weisburn, D.C.Pa.1943, 48 F.Supp. 393.

Failure of United States to file its claim against decedent's estate with probate court within statutory period provided by state law will not deprive Government of its right to proceed against administrator to enforce payment of its claim. U. S. v. Luce, D.C.Minn.1948, 78 F.Supp. 241.

§ 193. Priority of sureties

1. Operation and effect in general

Surety on bonds securing United States deposits in insolvent banks entitled to interest at rate banks contracted to pay United States. Mothersead v. U. S. Fidelity & Guaranty Co. (C. C. A. Okl. 1927) 22 F.2d 644, certiorari denied 48 S.Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. New Amsterdam Casualty Co., C.C.A. Okl.1927, 22 F.2d 654, certiorari denied 48 S.Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. Fidelity & Deposit Co. of Maryland, C.C.A.Okl.1927, 22 F.2d 654, certiorari denied 48 S.Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. Fidelity & Casualty Co. of New York, C.C.A.Okl. 1927, 22 F.2d 654, certiorari denied 48 S. Ct. 421, 276 U.S. 637, 72 L.Ed. 744; Mothersead v. American Surety Co. of New York, C.C.A.Okl.1927, 22 F.2d 655, certiorari denied 48 S.Ct. 421, 276 U.S 637, 72 L.Ed. 744.

Insolvent banks, surrendering assets to bank commissioner, made assignment and committed bankruptcy, giving priority to claims of United States to which surety on depository bond was subrogated. Id.

3. Persons who become entitled to priority—In general

Surety having paid sums due United States by failed bank, was entitled to priority as against assets transferred by state banking commissioner to another bank in consideration of its assumption of the liabilities of failed bank to its unsecured depositors, regardless of liability of banking commissioner to the United States. U. S. Fidelity & Guaranty Co. v. Ottawa County Nat. Bank (D. C. Okl. 1929) 32 F.(2d) 368.

Surety on bond of bank to secure United States deposits is entitled to priority of claim against assets of insolvent bank in amount paid by it on such bond. National Surety Co. v. Oswego State Bank of Oswego, Kan. (D. C. Kan. 1929) 33 F.(2d) 221.

A surety satisfying its principal's obligation to the United States is entitled to be subrogated to the priority of the United States. Standard Acc. Ins. Co. v. U. S., 1951, 97 F.Supp. 829, 119 Ct.Cl. 749.

Surety paying trustees in bankruptcy amount of their deposit in insolvent bank held not entitled to preference over other creditors as United States has no pecuniary interest in bankrupt estate's fund. Hartford Accident & Indemnity Co. v. Green (1931) 134 So. 487, 223 Ala. 407.

Where guardian of mentally incompetent war veteran deposited disability compensation received from government in bank, no preference could be claimed on bank's insolvency by guardian's surety, as subrogee, on ground government reserved title. U. S. Fidelity & Guaranty Co. v. Montgomery (1933) 146 So. 528, 226 Ala. 298.

8. Surety's priority as against United States

A surety satisfying his principal's obligation on a bond securing payment to laborers and materialmen does not have a superior right to retained percentages over the right of the Government to apply them in partial satisfaction of taxes owed by the principal. Standard Acc. Ins. Co. v. U. S., 1951, 97 F.Supp. 829, 119 Ct.Cl. 749.

Where the United States had retained certain percentages from the payments made to a contractor in the progress of the work before its default, the completing surety's right to the retained percentages was not superior to the right of the Government to apply them in partial satisfaction of taxes owed by the contractor. Id.

A surety's right of subrogation to the priority of the United States cannot operate contrary to the interests of the United States. Id.

9. Actions and proceedings to enforce priority

Surety, having paid claim due United States by failed bank and becoming entitled to priority by virtue of this section was entitled to pursue assets of failed bank on the theory of a trust. U. S. Fidelity & Guaranty Co, v. Ottawa County Nat. Bank (D. C. Okl. 1929) 32 F.(2d) 368.

10. Necessity of claiming priority

Where surety on bond securing bank deposit of Indian moneys held in trust by the United States paid claim of United States against bank upon insolvency of bank, surety was subrogated to statutory priority of United States for debts due United States in cases of insolvency, notwithstanding that proof of claim filed by United States and certificate of proof of claim issued by liquidating agent and assigned to surety did not claim or grant priority. Barnett v. American Surety Co. of New York (C. C. A. Okl. 1935) 77 F. (2d) 225.

§ 194. Compromise

Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, and upon the recommendation of the General Counsel for the Department of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accordingly. But the provisions of this section shall not apply to any claim arising under the postal laws. R.S. § 3469; May 10, 1934, c. 277, 11:40 a. m., § 512, 48 Stat. 758.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of

any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Functions of prosecuting in the courts of the United States claims and demands by, and offenses against, the United States, and of defending claims and demands against the United States, then exercised by any agency or officer were transferred to the Department of Justice; and as to any case referred to that Department for prosecution or defense in the courts, the function of decision whether and in what manner to prosecute, compromise, etc., then exercised by any agency or officer, was transferred to the Department of Justice by Ex.Ord. No. 6166, § 5, June 10, 1933, set out as note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. Compromise of cases under revenue laws, see section 3761 of Title 26, Internal Revenue Code.

½. In general

Except for the final provision regarding claims arising under the postal laws, R. S. section 3469 constituting this section re-enacted, word for word, the provisions of section 10 of the Act of March 3, 1863 (c. 76, 12 Stat. 737). (1929) 36 Op. Atty. Gen. 40.

1. Distinction between compromise and remission

The word "compromise" has a clear and well defined meaning and implies the making of mutual concessions in the settlement of claims of doubtful recovery. (1929) 36 Op. Atty. Gen. 40.

2. Power to compromise in general

Opinion of Attorney General to Secretary of Treasury dated October 24, 1933, relating to the power to compromise conferred by sections 194 of title 31 and 1661 of title 26, is not to be construed as precluding compromise of cases in which there is uncertainty as to liability or collection; nor is opinion to be understood as involving or restricting the authority and discretion of the Attorney General in matters of compromise. 1934, 38 Op.Atty.Gen. 98.

An offer of the Southern Pacific Railroad Company to compromise a claim of the United States against said company in the sum of $204,862.74 for fire trespass by the payment of $10,000 in cash and the relinquishment of the right of the company to receive from the United States certain lands selected by it in accordance with the terms of a congressional grant, may be accepted and the settlement so made will be a valid settlement under the provisions of this section. (1933) 37 Op. Atty.Gen. 298.

2½. —— Transfer of power to Attorney General

In cases referred to the Department of Justice, whatever powers of compromise were conferred by this section and section 1661 of title 26 are now vested in the Attorney General by virtue of section 5 of Executive Order No. 6166 of June 10, 1933. 1934, 38 Op.Atty.Gen. 98.

3. Claims subject to compromise—In general

The Secretary of the Treasury is authorized to accept a cash offer in compromise on account of a loan to a railroad company under the Transportation Act, 1920, § 210, 41 Stat. 946. 1939, 39 Op.Atty.Gen. 247.

5. —— Judgments in general

To same effect as original annotation, 1929, 36 Op.Atty.Gen. 40; 1934, 38 Op. Atty.Gen. 94.

8. —— Fines, penalties and forfeitures in general

Secretary of Treasury is without authority to compromise a case concerning penalties if there is doubt either as to the legality of the claim or as to the collectibility thereof. 1934, 38 Op.Atty. Gen. 94.

8½. —— Interest

Secretary of the Treasury is without authority to compromise a case concerning interest if there is doubt either as to the legality of the claim or as to the collectibility thereof. 1934, 38 Op. Atty.Gen. 94.

18. Recommendation in general

Where the Attorney General never made any recommendation under this section that a claim of the government on a note be compromised on terms offered, the cashing of maker's check and retention of proceeds for six months was not a manifestation of "assent" by the government to maker's offer of compromise, even though the cashing of the check and retention of the proceeds for that period would operate as a manifestation of "assent" as between two individuals. United States v. Wittmeyer, D.C.1940, 35 F.Supp. 541.

§ 195. Purchase on execution

"Solicitor of the Treasury" in line 3 should read "General Counsel for Department of Treasury."

The word "may" in line 3 should be "shall."

"May 10, 1934, c. 277, 11:40 A. M. § 512, 48 Stat. 758" should be added to citation.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Federal Rules of Civil Procedure

Effect of Rule 69 on this section, see note by Advisory Committee under said Rule 69.

Execution, see Rule 69.

§ 198. Debts to the United States; in what currency to be paid

All taxes and all other debts and demands than duties on imports, accruing or becoming due to the United States, shall be paid in gold and silver coin, Treasury notes, United States notes, or notes of national banks. R.S. § 3473; Feb. 27, 1877, c. 69, § 1, 19 Stat. 249.

Act June 3, 1864, c. 106, 13 Stat. 99, from which section was in part derived, is part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

Coins and currency which are legal tender for payment of public debts, public charges, taxes, etc., see section 462 of this title.

Federal Reserve Notes to be receivable for all taxes, customs and other public dues, see section 411 of Title 12, Banks and Banking.

Provisions requiring payment of obligations in gold declared against public policy, see section 463 of this title.

§ 199. Same; what coin receivable

No gold or silver other than coin of standard fineness of the United States shall be receivable in payment of dues to the United States, except as provided in section 374 of this title and section 692 of Title 43. R.S. § 3474.

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

The possession of gold coins and bullion was prohibited except under Government license by Ex.Ord.No.6260, Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

Silver coins coined under laws of Hawaii as receivable in payment of all dues of the United States, see section 518 of Title 48, Territories and Insular Possessions.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

All coins and currency made legal tender for payment of public dues, except gold coins below standard weight made legal tender only at valuation in proportion to actual weight, see section 462 of this title.

§ 201. Debts of United States; national bank notes receivable for

Act June 3, 1864, c. 106, § 23, 13 Stat. 106, which was part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

Federal Reserve Notes and circulating notes of Federal Reserve Banks and national banking associations declared to be legal tender for public debts see section 462 of this title.

§ 203. Assignments of claims; set-off against assignee

* * * * * * * * * * * *

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency: *Provided,*

1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned;

2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment;

3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing;

4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section, shall constitute a valid assignment for all purposes.

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitu-

tion, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

Any contract of the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of (1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract, (2) fines, (3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract), or (4) taxes, social security contributions, or the withholding or nonwithholding of taxes or social security contributions, whether arising from or independently of such contract.

Except as herein otherwise provided, nothing in this section, shall be deemed to affect or impair rights or obligations heretofore accrued. As amended Oct. 9, 1940, c. 779, § 1, 54 Stat. 1029; July 26, 1947, c. 343, Title II, § 205(a), Title III, § 305(a), 61 Stat. 501, 601; May 15, 1951, c. 75, 65 Stat. 42.

1951 Amendment. Act May 15, 1951, amended section to make it clear that a bank or other financing institution taking an assignment of claims pursuant to this section would not be subject to later recovery by the Government of amounts previously paid to the bank by the assignee except in cases of fraud.

1940 Amendment. Second paragraph was added to the Revised Statutes section cited to text by Act Oct. 9, 1940, also cited.

Third paragraph was from Act Oct. 9, 1940, cited to text.

Agents of lessors; applicability of section. Act May 27, 1908, c. 206, 35 Stat. 411, contained the following provision: "Hereafter the provisions of section thirty-four hundred and seventy-seven of the Revised Statutes (section 203 of Title 31) shall not apply to payments for rent of post-office quarters made by postmasters to duly authorized agents of the lessors."

Change of Name. The Department of War was designated the Department of the Army by section 205(a) of Act July 26, 1947, cited to text.

The Department of the Air Force was inserted under the authority of section 305(a) of said Act July 26, 1947.

Cross References. Assignment of public contracts by contractors authorized notwithstanding this section, see section 407(a) of Title 40, Public Buildings, Property, and Works.

Foreign Service officers' retirement benefits as assignable, see section 1004 of Title 22, Foreign Relations and Intercourse.

Loans for housing and buildings on potentially adequate farms, assignments relating to, see section 1473 of Title 42, the Public Health and Welfare.

Legislative History. For legislative history and purpose of Act May 15, 1951, see 1951 U.S.Code Cong.Service, p. 1414.

½. Rules of Civil Procedure

The Rules of Civil Procedure, 28 U.S.C.A., by their general provisions for all claims presented in the district court against any person have neither the intention nor the effect of setting aside this section prohibiting assignment of claims on the United States. U. S. v. Hill, C.A. Tex.1948, 171 F.2d 404, opinion supplemented on other grounds 174 F.2d 61.

1. Nature and purpose of statute

One of Congress' basic purposes in passing this section was that the government might not be harassed by multiplying the number of persons with whom it had to deal, and a primary purpose was to prevent persons of influence from buying up claims against the United States, which might then be improperly urged upon officers of the government, and another purpose was to prevent possible multiple payment of claims, to make unnecessary the investigation of alleged assignments, and to enable the government to deal only with the original claimant, and yet another purpose was to save to the United States defenses which it has to claims by an assignor by way of set-off and counterclaim which might not be applicable to an assignee. U. S. v. Shannon, S.C.1952, 72 S.Ct. 281, 342 U.S. 288, 96 L.Ed. 321, separate opinion 72 S.Ct. 286, 342 U.S. 288, 96 L.Ed. 321.

Primary purpose of this section was to prevent persons of influence from buying up claims which might then be improperly urged upon officers of the government, while an additional purpose was to prevent possible multiple payment of claims, to make unnecessary the investigation of

alleged assignments, and to enable the government to deal only with the original claimant. U. S. v. Ætna Cas. & Sur. Co., N.Y.1949, 70 S.Ct. 207, 338 U.S. 366, 94 L. Ed. 171, 12 A.L.R.2d 444.

The purpose of this section was to make it easier for the government contractors to secure financing for carrying out obligations to the government to the end that government contracts might be speedily and effectively performed. U. S. v. Hadden, C.A.Ohio 1951, 192 F.2d 327.

Purpose of statutory amendment to this section excepting a bank, trust company, or other financial institution from prohibition against assignments of certain claims against the United States, was to make it possible for war contractors to pledge to a bank, as collateral security, their claims against the government in order to enable them to borrow money to do work required by the contract. General Cas. Co. of America v. Second Nat. Bank of Houston, C.A.Tex.1950, 178 F.2d 679.

This section prohibiting assignment of claims against United States and powers of attorney for receiving payment without specified formalities is for the protection of the government, and does not prevent enforcement of an assignment after payments have been made by the government and are in the hands of the assigning contractor or a person claiming under the contractor with notice, especially when assignment is to contractor's surety which is devoting proceeds of the assignment to satisfaction of liabilities covered by the contractor's bond. Martin v. National Surety Co. (Mo.1937) 57 S.Ct. 531, 300 U.S. 588, 81 L.Ed. 822. See, also, National Refining Co. v. U. S., C.C.A.Mo.1947, 160 F.2d 951.

The purpose of this section is to protect the ascertainment and allowance of claims, in and out of court, against the splitting of them, against the multiplication of claimants, and against the complexities that might arise from disputes among original claimant and those claiming under him. U. S. v. Hill, C.A. Tex.1948, 171 F.2d 404, opinion supplemented on other grounds 174 F.2d 61.

A primary purpose of this section regulating assignments of moneys due from government was to keep government from being embroiled in controversies between contractors, assignees, and creditors, but it also has incidental effect of protecting assignee bank or other financing institution which complies with statute. Coconut Grove Exchange Bank v. New Amsterdam Cas. Co., C.C.A.Fla.1945, 149 F.2d 73.

This section making void all transfers and assignments made of any claim upon the United States was intended to protect the government from embroilment in conflicting claims. Rosecraus v. William S. Lozier, Inc., C.C.A.Mo.1944, 142 F.2d 118.

This section is for protection of United States. Bank of California, National Ass'n v. Commissioner of Internal Revenue, C.C.A.1943, 133 F.2d 428.

The purpose of this section is to protect the government from traffic in claims against it. Sherwood v. U. S., C.C.A.N.Y. 1940, 112 F.2d 587, reversed on other grounds 61 S.Ct. 767, 312 U.S. 584, 85 L. Ed. 1058.

Purpose of 1940 amendment to this section was to make it easier for government contractors to secure financing for carrying out obligations to government to end that government contracts might be speedily and effectively performed. Waxman v. U. S., Ct.Cl.1953, 112 F.Supp. 570.

Provision of this section that contract entered into by War or Navy Department may provide that payment to assignee of claim arising under such contract shall not be subject to set-off, and providing that, if so provided in contract, such payments should not be subject to reduction or set-off for indebtedness of assignor to United States arising independently of such contract, was intended to be interpreted and applied in accordance with ordinary and natural meaning of language used. Central Bank v. U. S., Ct. Cl.1952, 105 F.Supp. 992.

The 1940 amendment to this section Claims Act was enacted to facilitate financing of war contracts. Royal Indem. Co. v. U. S., 1950, 93 F.Supp. 891, 117 Ct.Cl. 736.

The purpose of this section declaring void all assignments of claims against the United States is to secure the government against embroilment in conflicting claims and subjection to double liability, and to discourage the enlistment of improper influences in advocacy of claims. Ozanic v. U. S., D.C.N.Y. 1949, 83 F.Supp. 4, affirmed 188 F.2d 228.

The purpose of this section is to protect the government against danger of conflicting claims and multiple liability. Lawn of Amherst v. U. S., D.C.N.Y.1948, 77 F.Supp. 80.

The purpose of this section is to protect the United States against defenses which it has to claims by an assignor by way of set-off, counterclaim, etc., which might not be applicable to an assignee. Grace, to Use of Grangers Mut. Ins. Co., v. U. S., D.C.Md.1948, 76 F.Supp. 174.

The purpose of this section is to restrict voluntary assignments or powers of attorney for payment of claims against the government, so as to better keep a steady status thereof and, in that way, for the benefit of the government, facilitate the undistracted consideration, determination, and safe payment of such claims. Hill v. U. S., D.C.Tex. 1947, 74 F.Supp. 129, set aside 171 F.2d 404, reversed on other grounds 174 F.2d 61.

This section was enacted for protection of government and does not prevent giving effect to assignment of condemnation award deposited in registry of court. U. S. v. Certain Lands in Town of Highlands, N.Y., D.C.N.Y.1943, 49 F. Supp. 962.

This section providing that all transfers and assignments of any claim against the United States shall be void unless properly executed after allowance of the claim, ascertainment of the amount due and issuing of a warrant for payment thereof, was passed to protect the government and to prevent it from being embroiled in conflicting claims which might delay and embarrass, and result in multiple liability. U. S v. Certain Lands in Town of Highlands, Orange County, N. Y., D.C. N.Y.1942, 46 F.Supp. 386; U. S. v. Crain, C.C.A.Ark.1945, 151 F.2d 606, certiorari denied 66 S.Ct. 817, 327 U.S. 792, 90 L.Ed. 1019.

This section was intended to protect the United States against danger that rights of government might be embarrassed by having to deal with several persons instead of one, and by introduction of a party who was stranger to original transaction, and that by transfer of claim to one or more persons not originally interested therein, the way might be opened to improper influences in prosecuting claim before departments, courts or Congress. Roomberg v. U. S., D.C.Pa.1941, 40 F.Supp. 621.

The primary purpose of this section is to give protection to the government. McKenzie v. Irving Trust Co., 1943, 42 N. Y.S.2d 551, 266 App.Div. 599, appeal de-

nied 44 N.Y.S.2d 264, 266 App.Div. 948, motion denied 52 N.E.2d 601, 291 N.Y. 722, affirmed 55 N.E.2d 192, 292 N.Y. 347, affirmed 65 S.Ct. 405, 323 U.S. 365, 89 L. Ed. 305.

The function of the formalities prescribed by this section for assignments of claims upon the United States is merely the protection of the United States from dubious claims, and noncompliance with them is irrelevant once the United States has been discharged from liability. First Nat. Bank of Stockton v. Pomona Tile Mfg. Co., 1947, 186 P.2d 693, 82 Cal.App.2d 592.

Statute forbidding assignment of funds due contractor on public work is for government's protection. First Nat. Bank of North Bend v. United States Fidelity & Guaranty Co. (1928) 271 P. 57, 127 Or. 147.

The purpose of this section was to protect the United States and not to protect or penalize a claimant or to regulate business transactions between private persons. Richmond Postal Credit Union v. Booker, 1938, 195 S.E. 663, 170 Va. 129.

3. Construction and validity of act

This section should be construed so as to carry out purpose of Congress, which was to encourage private financing of government contracts; and to allow government to set off its liability to an assignee of the proceeds of such a contract government's claim against assignor for withholding taxes and federal assignor's liability unemployment taxes would be to defeat that purpose. Central Bank v. U. S., Ct.Cl.1953, 73 S.Ct. 917.

This section must be interpreted in the light of its purpose to give protection to the government. Roomberg v. U. S., D.C.Tenn.1941, 40 F.Supp. 621.

3½. —— With other laws

Where manufacturer entered into contract with the government for manufacture of anti-aircraft shells and performed under that contract until August 14, 1945, when contract was terminated under the War Contract Settlement Act, section 101 et seq. of Title 41, and, in the meantime, on June 15, 1945, manufacturer had entered into factoring agreement with financial institution whereby financial institution was to lend money to manufacturer on security of assignment to financial institution of manufacturer's contract with the government under this section and, in reliance on assignment, financial institution made loans to manufacturer, and the government made payments to the financial institution on the assigned contract by mistake when nothing was owing thereunder, the government could not recover such payment. U. S. v. Hadden, C.A.Ohio 1951, 192 F.2d 327.

Section 15 of Title 41 prohibiting assignment of government contracts is given a construction similar to that given this section declaring void the assignment of claims against the United States. Ozanic v. U. S., D.C.N.Y.1949, 83 F.Supp. 4, affirmed 188 F.2d 228.

4. Operation and effect—In general

This section will not be held inapplicable merely because all possible claimants are before the court. U. S. v. Shannon, S.C.1952, 72 S.Ct. 281, 342 U.S. 288, 96 L.Ed. 321, separate opinion 72 S.Ct. 286, 342 U.S. 288, 96 L.Ed. 321.

To hold this section inapplicable because an assignment has been executed under a "mutual mistake of law" would require an inquiry into the state of mind of all parties to a challenged assignment, and would reward those who are ignorant of this section which has been on the books for nearly a century, and the all-inclusive language of this section permits no such easy escape from its prohibition. Id.

To be "independent" within this section's provision that contract entered into by War or Navy Department may provide that payments to assignee of claim arising under such contract shall not be subject to set-off, and provision that, if so provided in contract, such payment should not be subject to reduction or set-off for indebtedness of assignor to United States arising independently of such contract, indebtedness must arise irrespective of, exclusive of, and separate from contract and must have no direct relation with such contract. Central Bank v. U. S., 1952, 105 F.Supp. 992, 123 Ct.Cl. 237, certiorari granted 73 S.Ct. 644, 345 U.S. 903, 97 L.Ed. —.

Effect of anti-assignment statute is not to regulate business transactions of private individuals, but to prevent frauds upon the Treasury. Royal Indem. Co. v. U. S., 1950, 93 F.Supp. 891, 117 Ct.Cl. 736.

Assignee under this section as amended, acquires no greater right in respect to amounts due under contract than its assignor had, and right of assignee to demand payment by government of an amount due from it for work performed under contract, is subject to performance by contractor of his contractual obligations. Id.

Effect of enactment of this section was to place government in same position as that of any ordinary debtor, and therefore when question regarding assignments as they affect government arise, general law of assignments must govern. Central Nat. Bank of Richmond, Va. v. U. S., 1950, 91 F.Supp. 738, 117 Ct.Cl. 389.

Assignee of an interest in condemnation award that might be paid by the United States for realty for the United States Military Academy at West Point had no interest in award that might be paid, where there had been no allowance of any claim against the United States, no taking, no payment, and no issuance of warrant for payment. U. S. v. Certain Lands in Town of Highlands, Orange County, N. Y., D.C.N.Y.1942, 46 F.Supp. 386.

4½. Waiver

While this section relating to claims against United States may be waived by proper agents of the United States after claim has been allowed it may not be waived in advance of allowance. U. S. v. Shannon, C.A.S.C.1951, 186 F.2d 430, reversed on other grounds 72 S.Ct. 281, 342 U.S. 288, 96 L.Ed. 321.

Where government demurred to complaint of taxpayer's assignee for recovery of tire manufacturer's excise tax on ground that assignment was invalid, the government by answering after demurrer was overruled did not "waive" its right to challenge the validity of the assignment as disclosed by the claim for refund. B. F. Goodrich Co. v. U. S., C.C.A.Cal.1943, 135 F.2d 456, affirmed 64 S. Ct. 471, 321 U.S. 126, 88 L.Ed. 602, rehearing denied 64 S.Ct. 614, 321 U.S. 803, 88 L.Ed. 1089.

The United States may waive protection of this section and may recognize and give effect to an assignment prohibited thereby. Bank of California, National Ass'n v. Commissioner of Internal Revenue, C.C.A.1943, 133 F.2d 428.

This section is for the protection of the United States, and the United States may waive such protection and give effect to assignments. California Bank v. U. S. Fidelity & Guaranty Co., C.C.A.Cal. 1942, 129 F.2d 751.

The purpose of this section pertaining to validity of assignments of claims against the United States is solely to

protect the government against a multiplicity of conflicting claims and the consequent delay and embarrassment which protection government is at liberty to waive. In re Webber Motor Co., D.C.N.Y.1943, 52 F.Supp. 742, 55 Am. Bankr.Rep.N.S. 340.

5½. Law governing

In proceedings in federal District Court in New Jersey for reorganization, under the Bankruptcy Act, section 501 et seq. of Title 11, of New York corporation authorized to do business in New Jersey, New Jersey law would be presumed to determine the effectiveness of assignment by debtor under this section and section 15 of Title 41, executed and delivered prior to filing of reorganization proceedings. In re Italian Cook Oil Corp., D.C. N.J.1951, 190 F.2d 994.

6. Effect as to liens

Equitable rights of laborers and materialmen to funds remaining due contractor upon completion of contract were superior to rights of party who advanced money to complete contract and claimed certain progress payments under invalid assignment from contractor after completion of contract. Martin v. National Surety Co. (C.C.A.Mo.1936) 85 F. 2d 135, affirmed 57 S.Ct. 531, 300 U.S. 588, 81 L.Ed. 822.

Holder of mortgage constituting first lien on property condemned was entitled to have claim for principal of mortgage and interest paid from condemnation award with interest to date of payment. U. S. v. Certain Lands in Town of Highlands, N. Y., D.C.N.Y.1943, 49 F.Supp. 962.

Where owner, owner's vendee and mortgagee executed assignment making village taxes on mortgaged land not taken payable from condemnation award for mortgaged land outside village, claim of village was payable out of moneys apportioned to the mortgagee and the amount of the village's claim could not be added to the mortgagee's lien. Id.

An attorney's lien on condemnation award does not take precedence over liens already encumbering the property. Id.

Where at time of institution of condemnation proceeding land was encumbered by lien for taxes, mortgage and mechanic's lien judgment, attorney's lien on condemnation award, for services rendered in the condemnation proceeding, were junior to such encumbrances. Id.

Where trustee for judgment lien creditors had extended time of payment of debt on assurances by member of firm of attorneys representing debtor that no steps would be taken to thwart trustee from collecting money due him and it was not shown that attorneys had paid disbursements or become responsible for disbursements in condemnation proceeding, it would be inequitable to grant to attorneys who claimed attorneys liens, any priority of payment out of condemnation award over amount due trustee. Id.

8. Necessity of strict compliance

Motion to dismiss suit on claim against government must be granted as to plaintiffs suing as assignees, where declaration merely alleged assignment of claim, and that assignees were now owners thereof. H. M. O. Lumber Co. v. U. S. (D. C. Mich. 1929) 40 F.(2d) 544.

Assignment of claim against United States for preparatory expenditures in executing contract was void where conditions under this section were not complied with. Hodes v. U. S., 1948, 76 F. Supp. 1021, 111 Ct.Cl. 370.

9. Assignments or transfers within statute—In general

Where assignment of claim against United States only passed legal title to parties who already owned entire beneficial interest in claim, assignment was not rendered void by statute concerning assignment of claims against United States. Novo Trading Corporation v. Commissioner of Internal Revenue, C.C.A. 1940, 113 F.2d 320.

This section declaring void all assignments of claims against United States is restricted in its application to voluntary assignments. Ozanic v. U. S., D.C.N.Y. 1949, 83 F.Supp. 4, affirmed 188 F.2d 228.

A corporate maker's assignment to payee of claim against United States arising out of over-assessment of income taxes was void and had no present value and did not work discharge of notes where assignment was not executed in accordance with this section and no warrant for payment had issued and payment thereunder had not been made and United States was creditor of corporation. Rodd v. Kamen Products Co., 1949, 89 N.Y.S.2d 406, 275 App.Div. 855.

Assignment of invoices or copies of invoices, or attempted assignment, of shipments of lumber to government of United States, held void, where assignments were made prior to allowance of claims by government and, prior to ascertainment of amounts due or issuance of warrants in payment thereof, were not witnessed or acknowledged, and did not recite warrant for payment. Weyerhaeuser Timber Co. v. First Nat. Bank of Portland (1935) 43 P.2d 1078, 150 Or. 172.

This section and section 15 of Title 41 authorized an assignment by a contractor to an insurance company of moneys due or to become due under a contract with the Government. 1943, 40 Op.Atty. Gen. 269.

9½. —— Judicial exemptions

Suits pursuant to the Public Vessels Act, section 781 et seq. of Title 46, have not been judicially exempted from this section, but since they are to be conducted in accordance with the Suits in Admiralty Act, section 741 et seq. of Title 46, it may be assumed that if this section is inapplicable to the latter it is equally inapplicable to the former. Ozanic v. U. S., D.C.N.Y.1949, 83 F.Supp. 4, affirmed 188 F.2d 228.

Transfers by operation of law, assignments for benefit of creditors, transfers by judicial order, and transfers resulting from consolidation of two corporations, are not within this section declaring void all assignments of claims against the United States. Id.

11. —— Merger of corporations or transfer of stock

Corporation acquiring all stock of foreign corporation pursuant to reorganization plan with same stockholders could sue on claim of original corporation against federal government. Kingan & Co., Inc. v. U. S. (Ct. Cl. 1930) 44 F.(2d) 447.

This section does not apply to transfer resulting from merger of corporations. Monarch Mills v. Jones (D. C. S. C. 1931) 56 F.2d 180, affirmed without reference to this point 59 F.2d 502.

Foundation of new corporation by merger is not assignment of claim of one of old corporations for overpayment of tax. Consolidated Paper Co. v. U. S. (Ct. Cl. 1932) 59 F.2d 281, certiorari denied 53 S. Ct. 506, 288 U. S. 615, 77 L. Ed. 988.

Where corporation which purchased entire stock of second corporation which was owned by plaintiffs agreed that as part of purchase price, plaintiffs were to have benefit of any recoveries which might be obtained on behalf of second

corporation under former section 722 of Title 26 relating to excess profits tax refunds, transfer to plaintiffs of benefits, if any, available under such section was non-assignable as against the United States. Ward v. Flex-O-Tube Co., D.C. Mich.1953, 112 F.Supp. 658.

11½. —— Dissolution of corporation

Where stockholders of New York corporation agreed in June, 1932, to liquidate corporation, which thereafter remained dormant although no certificate of dissolution was filed, and agreement provided that enumerated assets, including claim against United States for refund of import duties, "shall remain the property of and belong to" parties to agreement, "each of them to share in the net proceeds equally", claim for refund was transferred to stockholders by agreement, and hence proceeds of claim, which was collected in 1934, did not constitute "income" of corporation so as to subject corporation to deficiency assessment for income and excess profits taxes. Novo Trading Corporation v. Commissioner of Internal Revenue, C.C.A.1940, 113 F.2d 320.

11⅝. —— Change in legal entity

Where claim against United States was transferred from corporation to partners who were the sole and only stockholders of the corporation, and claim together with a claim of the partnership itself passed to corporation when business of partnership was reincorporated, the transfers were not invalid under this section. Mitchell Canneries v. U. S., 1948, 77 F.Supp. 498, 111 Ct.Cl. 228.

12. —— Agreements or powers of attorney in consideration of services

Attorney's lien on funds allegedly due client from United States was in nature of an assignment by operation of law, and, thus, was not such an assignment as is contemplated by this section. Malman v. U. S., C.A.N.Y.1953, 202 F.2d 483.

Contract whereby tax specialists agreed to prosecute taxpayer's claim against government for refund in consideration of one-third of total amount which taxpayer might recover and whereby taxpayer was to pay specialists nothing if they were unsuccessful, held not void under this section. Wardman v. Leopold (1936) 85 F.(2d) 277, 66 App.D.C. 111, 106 A.L.R. 1487, certiorari denied 57 S.Ct. 23, 299 U.S. 570, 81 L.Ed. 420.

13. —— Assignments made to secure loans or advances

Under Soil Conservation Act, section 590h(g) of Title 16, assignments by farmers of their claims for benefits in order to finance making a crop are valid as between the parties, but no remedy is provided through the courts to enforce the assignment as against federal government. U. S. v. Crain, C.C.A.Ark.1945, 151 F.2d 606, 327 U.S. 792, certiorari denied 60 S.Ct. 817, 90 L.Ed. 1019.

A postal employee's agreement that his monthly checks were to be held by treasurer of corporate payee of note executed by employee for monthly payments on note was not a "transfer" or "assignment" of a "claim" against the United States within this section, notwithstanding that treasurer knew when loan was made that an assignment of a claim against the United States was invalid unless certain formalities were complied with. Richmond Postal Credit Union v. Booker, 1938, 195 S.E. 663, 170 Va. 129.

17. —— Subcontracts let by contractor

This section making void all transfers and assignments made of any claim upon the United States did not apply to assignment of claim for breach of contract for operation by plaintiff's assignor of cafeteria commissary on federal property for use of ordnance works employees against contractors for erection of ordnance plant for United States. Rosecrans v. William S. Lozier, Inc., C.C.A.Mo.1944, 142 F.2d 118.

Where contractor by first assignment transferred to first financing bank all money payable under prime contract with the United States, and subcontractor by second assignment transferred to second bank all money payable under subcontract, an implied assignment, arising from arrangement, by first bank to second bank of money paid under prime contract for work done by subcontractor was valid though not made with formalities prescribed by this section, and was not voidable by a subsequent assignee on that ground, once the United States had been discharged from liability. First Nat. Bank of Stockton v. Pomona Tile Mfg. Co., 1947, 186 P.2d 693, 82 Cal.App.2d 592.

Assignment to plaintiff of claims for services and materials furnished to United States by subsidiaries of plaintiff, come within this section. Packard Motor Car Co. v. U. S. (1924) 59 Ct. Cl. 354.

Subcontract of construction company, if constituting assignment of government contract for construction of bridge, was not invalid assignment of claim. Farmers' State Bank of Riverton v. Riverton Const. Co. (1928) 270 P. 1082, 39 Wyo. 238.

Contract of construction company under contract with government procuring another to build bridge for it held no assignment. Id.

18. —— Assignment by way of compromise or settlement

A contract between parties to action for settlement of case by defendant's payment of stated cash sum and assignment of claim, not yet filed, against the United States for refund of processing taxes paid by defendant, was not void, though assignment was invalid, and terms and provisions of such contract, together with parties' co-operation for collection of claim pursuant to contract, operated as "equitable assignment", giving plaintiff an interest in amount of check issued by United States in settlement of all claims asserted against it by defendant. People of State of New York v. Hanley Milling Co., D.C.Ohio 1941, 41 F.Supp. 844, affirmed 123 F.2d 819.

19. —— Assignment or transfer by operation of law

This section does not apply to assignments by operation of law, as distin- S. v. Shannon, S.C.1952, 72 S.Ct. 281, 342 U.S. 288, 96 L.Ed. 321, separate opinion 72 S.Ct. 286, 342 U.S. 288, 96 L.Ed. 321.

Transfers by will and general assignments for benefit of creditors are two types of voluntary assignments which are recognized as exceptions to the broad sweep of this section, and the first of these exceptions is justified by analogy to transfers by intestacy, which are exempt from this section as being transfers by operation of law, and the exception for voluntary assignments for benefit of creditors is justified by analogy to assignments in bankruptcy. Id.

Where vendors agreed to sell their land and buildings located thereon to purchasers and further agreed that after completion of sale and delivery of deed the vendors "hereby release to the purchasers any claim, reparation, or other cause of action against the United States Government for any damage caused the property," and vendors were free to sell their land as well as their damage claim to whomever they pleased or they could have sold the land and the claim separately, and one of purchasers understood that he was buying a claim against the

government, the assignment was voluntary within principle that this section does not apply to assignments by operation of law, as distinguished from voluntary assignments. Id.

All assignments by operation of law are exempt from prohibition of this section, including cases which may involve the government in procedural and administrative difficulties. U. S. v. Ætna Cas. & Sur. Co., N.Y.1949, 70 S.Ct. 207, 338 U.S. 366, 94 L.Ed. 171, 12 A.L.R.2d 444.

This section does not embrace cases where there has been transfer of title by operation of law, such as transfer of claims by receiver of railroad. Western Pac. R. Co. v. U. S. (1925) 45 S. Ct. 503, 268 U.S. 271, 69 L.Ed. 951.

Where Yugoslav government nationalized a Yugoslav corporation owning vessel which theretofore collided with tanker owned by United States, and Yugoslav government thereafter assigned maritime claim growing out of such collision to an English corporation, and assignment of claim was not for benefit of shareholders of Yugoslav corporation, the assignment to English corporation was not "involuntary" within implied exceptions to this section. Ozanic v. U. S., C.A.N.Y.1951, 188 F.2d 228.

This section has reference to voluntary transfers or assignments of claims against the United States, not to transfers by operation of law or to equitable subrogation. U. S. v. South Carolina State Highway Dept., C.A.S.C.1948, 171 F.2d 893.

This section prescribing method by which claim upon the United States may be assigned, does not apply to involuntary assignments. Ætna Cas. & Sur. Co. v. U. S., P. O. Dept., C.A.N.Y.1948, 170 F.2d 469, 93 L.Ed. 1112, affirmed 70 S.Ct. 207, 338 U.S. 366, 94 L.Ed. 171, 12 A.L.R. 2d 444.

Where claim of taxpayer's assignee for refund of tire manufacturer's excise taxes alleged assignments of claim but did not urge that assignee had obtained title to claim by operation of law by virtue of assignee's sole ownership of stock of corporate taxpayer and dissolution of taxpayer and condition of section 3772 of Title 26, requiring claim for refund to set forth exact ground on which subsequent suit for recovery of tax is based, had not been waived, the government could defend assignee's action to recover tax paid on ground that claim presented to the commissioner did not include ground that it had obtained title to the claim by operation of law. B. F. Goodrich Co. v. U. S., C.C.A.Cal.1943, 135 F. 2d 456, affirmed 64 S.Ct. 471, 321 U.S. 126, 88 L.Ed. 602, rehearing denied 64 S.Ct. 614, 321 U.S. 803, 88 L.Ed. 1089.

The commissioner's rejection of claim of taxpayer's assignee for refund of tire manufacturer's excise tax with statement that the claim was a duplicate of claim filed by taxpayer, did not constitute a "waiver" of condition of section 3772 of Title 26, that the ground set forth in complaint to recover tax be the same as the ground set forth in claim for refund and did not permit assignee to maintain action to recover tax paid on theory, not stated in claim, that on dissolution of the corporate taxpayer the assignee, as sole stockholder, became entitled to the refund by virtue of an assignment by operation of law. Id.

This section providing that assignments of claims against the United States are void does not apply to assignments by operation of law. Morgenthau v. Fidelity & Deposit Co. of Maryland, 1938, 94 F.2d 632, 68 App.D.C. 163.

This section does not apply to transfers by operation of law: accordingly it does not prevent the attaching of a statutory attorney's lien to a refund by the Customs Court. Brooks v. Mandel-Witte Co., Inc. (C.C.A.N.Y.1932) 54 F.2d 992, certiorari denied 52 S.Ct. 641, 286 U.S. 559, 76 L.Ed. 1292.

This section applies only to voluntary assignments of demands against the government, and does not embrace subrogation and other cases where transfer of title has occurred by operation of law. Niagara Fire Ins. Co. v. U. S., D.C.N.Y. 1948, 76 F.Supp. 850.

Where corporation transferred all of its assets, including claim against the United States, to successor, in exchange for all shares of the capital stock of successor and assumption by successor of all liabilities of corporation, assignment of claim did not violate this section, and successor was entitled to sue the United States on the claim, since the assignment was by operation of law. Pantex Pressing Mach. v. U. S., 1947, 71 F.Supp. 859, 108 Ct.Cl. 724.

Where Massachusetts superior court by decree approved conveyance of building which had been leased to the United States by corporation in receivership, receiver's transferee was not precluded from maintaining action against the United States for untenantable use of the building under section 203 of Title 31 forbidding voluntary assignment of claims against the United States, since sale by the receiver was not a "voluntary assignment". New Rawson Corporation v. U. S., D.C.Mass.1943, 55 F.Supp. 291.

Transfer by trustee in bankruptcy of bankrupt's claims against United States, pursuant to bankruptcy court's order, would not be void as in violation of this section, since transfer is by operation of law. In re Pottasch Bros. Co. (D. C. N. Y. 1935) 11 F.Supp. 275, affirmed 79 F.2d 613, 101 A.L.R. 1182.

19½. —— Assignment to state

A corporation, asserting contract for settlement of state's suit against it by its payment of stated sum to state and assignment thereto of its claim against United States for refund of processing taxes as bar to state's recovery of balance due after such payment in subsequent action, is equitably obligated to pay state amount collected on claim agreed to be assigned, though assignment was invalid. People of State of New York v. Hanley Milling Co., D.C. Ohio 1941, 41 F.Supp. 844, affirmed 123 F.2d 819.

A state, accepting cash sum and assignment of claim against United States for refund of processing taxes paid by claimant in full payment and discharge of claimant's liability to state for amount sued for thereby, can recover from claimant only amount allowed on such claim, as settlement contract was valid, though assignment itself was void. Id.

A state, accepting cash sum and assignment to it of claim against United States for refund of processing taxes in compromise settlement of state's action against claimant, is entitled to recover from claimant such proportion of amount of check, issued by United States in settlement of all claims asserted against it by claimant, as claim agreed to be assigned bears to total amount of claims compromised. Id.

19¾. —— Assignments by governments

Assignment by Yugoslav government to British corporation of claim against United States for damages from loss of vessel was void under this section declaring void the assignment of all claims against the United States. Ozanic v. U. S., D.C.N.Y.1949, 83 F.Supp. 4, affirmed 188 F.2d 228.

20. —— Assignments for benefit of creditors and title of trustees or receivers in bankruptcy or insolvency

Plaintiff acquiring claim for breach of contract through sale in bankruptcy proceedings of assets of corporation to which government contractor had attempted to assign contract cannot recover. Doblin v. U. S. (1928) 64 Ct. Cl. 352.

Where plaintiff's claim was conveyed to another by order of court appointing receivers, new owner may intervene in Court of Claims; such conveyance not being an "assignment." Export Oil Corporation v. U. S. (1928) 64 Ct. Cl. 342.

Bankrupt's claim against United States for refund of customs duties passed to his trustee in bankruptcy, notwithstanding provisions of statute forbidding assignment of such claims. In re Gerstenzang (D. C. N. Y. 1933) 5 F. Supp. 904.

Bankrupt's claim against United States for refund of customs duties could be sold by trustee pursuant to order of bankruptcy court, such transfer being by operation of law and not within statute forbidding assignment of such claims. Id.

20½. —— Sums held for benefit of others

Where attorneys agreed to prosecute claim before American-Mexican Claims Commission against the Republic of Mexico for death of client's husband for a percentage of the recovery and Mexico paid to United States Treasury for the benefit of client a sum in satisfaction of her claim, contingent fee contract was not invalidated by this section making void all assignments of claims upon the United States, since United States had no interest in funds held as trustee for client. Correll v. Holt, Okl.1942, 132 P.2d 953, 191 Okl. 622.

21. —— Assignment of claims after issuance of draft in payment thereof

Where government's payment under construction contract was made to contractor and by it delivered to contractor's creditor before the assignment of contractor's claim against the government to the creditor was perfected, the government's obligation was discharged in determining whether the government's check constituted a preferential transfer within the Bankruptcy Act, section 96(a) of Title 11. McKenzie v. Irving Trust Co., N.Y.1945, 65 S.Ct. 405, 323 U.S. 365, 89 L.Ed. 305, 57 Am.Bankr.Rep. N.S. 267.

Claims against United States cannot be assigned until they have been allowed and a warrant issued for them. Doyle v. C. I. R., C.C.A.4, 1945, 147 F.2d 769.

21¼. —— Division of relief money

Agreement between corporation and defendant for collection by defendant and division of federal relief money payable to corporation and defendant for damages sustained by them through quarantine upon harvesting and marketing of hay held not void as assignment of claim. United Hay Co. v. Ford (1934) 76 S.W. (2d) 480, 124 Tex. 213, answers conformed to 81 S.W.2d 776.

21½. —— Assignment of patent infringement claim

This section was held applicable to assignment of claim for infringement of patent, but not to claim created by section 68 of Title 35, Patents, in so far as such section deprives patent owner of remedy against government's infringing private contractor. Richmond Screw Anchor Co. v. U. S. (Ct. Cl. 1928) 48 S. Ct. 194, 275 U. S. 331, 72 L. Ed. 303.

21¾. —— Credit of overpayment of tax

Taxpayer's authorization of Internal Revenue Commissioner to apply overpayment on his income tax in satisfaction of additional tax on income of his deceased wife, of whose estate he was executor, held not void assignment of claim against United States. Muir v. U. S. (Ct. Cl. 1933) 3 F. Supp. 619.

21⅞. —— Refund of taxes

Where withdrawing partner sold to third party on December 31, 1947, his interest in partnership doing business under fictitious name and thereafter the remaining partner and the third party continued doing business under the same fictitious name, and withdrawing partner transferred to third party his interest in partnership claim against United States for refund of cabaret tax, the anti-assignment statute precluded the remaining partner and the third party from recovering any part of cabaret tax paid for 1947 or prior thereto. Naylor v. U. S., D.C.Cal.1952, 102 F.Supp. 309.

Assignment by debtor, under arrangement, of "any and all tax refunds which may be due or owing to the debtor from the United States Government" was not within meaning of this section and hence such assignment, although affecting unliquidated tax refund claims, was effective to vest in receiver any rights of debtor to tax refunds. In re Kepp Elec. & Mfg. Co., D.C.Minn.1951, 98 F.Supp. 51, appeal dismissed 191 F.2d 735.

Attempted assignment of claim against Collector of Internal Revenue of social security taxes paid under protest was void where conditions precedent to validity of such assignment as required by this section were not complied with. National Campaign Committee v. Rogan, D. C.Cal.1945, 69 F.Supp. 679.

The purchase by packing company of all of the assets of slaughtering company which had paid processing taxes upon slaughtering of hogs for packing company did not create in packing company right to recover refunds, notwithstanding one person owned all the stock in both corporations. Upchurch Packing Co. v. U. S., D.C.Ga.1943, 53 F.Supp. 791, affirmed 151 F.2d 983, certiorari denied 66 S.Ct. 960, 327 U.S. 803, 90 L.Ed. 1028.

Where claims for tax refunds were based solely upon assignments by corporate taxpayer to plaintiff and plaintiff did not assert right to refund as sole stockholder of corporate taxpayer or by reason of corporate taxpayer having been dissolved until filing of first amended petition, the status of the plaintiff as a claimant against the United States was within inhibition of this section. B. F. Goodrich Co. v. U. S., D.C.Cal.1940, 48 F. Supp. 453, affirmed 135 F.2d 456, affirmed 64 S.Ct. 471, 321 U.S. 126, 88 L.Ed. 602, rehearing denied 64 S.Ct. 614, 321 U.S. 803, 88 L.Ed. 1089.

Where joint stock land bank was being dissolved under the Emergency Mortgage Act of 1933, sections 1016–1019 of Title 12, and assignment of its assets to a trustee was in accordance with a plan of liquidation approved by the Farm Credit Administration and the Federal Registrar, this section declaring void assignments of claims against the United States unless executed as therein prescribed did not apply to assignment to the trustee of bank's claim for refund of income taxes. Kentucky Joint Stock Land Bank v. Glenn, D.C. Ky.1942, 46 F.Supp. 400.

21 15/16. —— Notice of assignment

Generally, notice of assignment is effective as of time of its receipt. Central Nat. Bank of Richmond, Va. v. U. S., 1950, 91 F.Supp. 738, 117 Ct.Cl. 389.

Where bank received assignment of claim under public contract and government received timely notice of such assignment, bank was entitled to recover upon claim, notwithstanding fact that

government had erroneously paid such claim to assignor. Id.

Congressional intent that this section shall retain its operative effect in spite of the enactment of statutes such as the Suits in Admiralty Act, section 741 et seq. of Title 46, and the Federal Tort Claims Act, sections 1346, 2674 of Title 28, is evidenced by failure of Congress to establish any general procedure for giving notice of assignment of claims against the government. Ozanic v. U. S., D.C.N.Y.1949, 83 F.Supp. 4, affirmed 188 F.2d 228.

26. Claims within purview of statute—In general

Claims against the United States may not be assigned in whole or in part. Ansorge v. C. I. R., C.C.A.2, 1945, 147 F.2d 459.

An assignment of claim against the United States for refund of processing taxes before filing of such claim was void as violating this section. People of State of New York v. Hanley Milling Co., D. C.Ohio 1941, 41 F.Supp. 844, affirmed 123 F.2d 819.

The rights of claimants to distributive portion of money paid into United States Treasury by Mexican government under Special Claims Convention are not "claims against the United States" within this section. American-Mexican Claims Bureau v. Morgenthau, D.C.D.C. 1939, 26 F.Supp. 904.

A "claim" against the United States within this section is a right to demand money from the United States, and only refers to claims against the United States which can be presented by the claimant to some department or officer of the United States for payment, or may be prosecuted in the Court of Claims. Richmond Postal Credit Union v. Booker, 1938, 195 S.E. 663, 170 Va. 129; Rosecrans v. William S. Lozier, Inc., C.C.A.Mo. 1944, 142 F.2d 118.

26½. —— Condemnation awards

Where at time government took possession of property under order of possession, legal title was in landlord with a lease and option to purchase in tenant, option of purchase became an interest which inhered in the land under Ohio law, and doctrine of equitable conversion applied, and, when tenant subsequently exercised option to purchase, claim for compensation from government ran to tenant, and there was no assignment barred by this section. 23 Tracts of Land, etc. v. U. S., C.A.Ohio 1949, 177 F.2d 967.

A claim for just compensation for property which has been condemned is not assignable. U. S. v. Burnette, D. C.N.C.1952, 103 F.Supp. 645.

An attorney's lien on condemnation award would only attach to that portion of award owned by the client of the attorney. U. S. v. Certain Lands in Town of Highlands, N. Y., D.C.N.Y.1943, 49 F. Supp. 962.

The county was entitled to first lien on condemnation award for unpaid taxes on property condemned, together with interest and penalties legally accruing to date of payment. Id.

Where amount of condemnation award has been paid by government to clerk of court, government's interest in fund, except possibly as amicus curiae to assist court in its determination of those to whom fund should be paid and to obtain necessary releases and satisfactions of liens, ceases, so that this section would not apply to an assignment. Id.

31. —— Claims against Director General of Railroads

Contract whereby attorneys prosecuted railway employee's personal injury action against federal Director General of Railroads on contingent fee basis held not illegal as assignment of portion of claim against government. Stephens v. Davis 1934, 36 P.2d 316, 140 Kan. 220, certiorari denied 55 S.Ct. 542, 294 U.S. 720, 79 L.Ed. 252, petition for rehearing extended 55 S. Ct. 652.

31½. —— Claims originally against Emergency Fleet Corporation

Suit by assignee of claim against United States held maintainable notwithstanding assignment of claim against United States is forbidden where claim assigned was originally against United States Emergency Fleet Corporation against whom assignments are not forbidden. Rhodes v. U. S. (D. C. N. Y. 1934) 8 F. Supp. 124.

31¾. —— Claims for admiralty damages

Assignments of claims for damages suffered by cargo of ship employed by the United States as a merchant vessel did not violate this section, but viewed in the light of the Suits in Admiralty Act, sections 741-752 of Title 46 were valid, and section 742 of Title 46 conferred on assignee the right to maintain libel against the United States. Seaboard Fruit Co. v. U. S., D.C.N.Y.1947, 73 F.Supp. 730.

32. —— Claims for customs duties illegally exacted

Where in settlement of claim against bankrupt estate trustee in bankruptcy released claim to collateral "held or claimed to be held" by creditor, but referee's order approving settlement inadvertently omitted collateral "claimed to be held," thereby excluding claims against United States for excess customs duties paid by bankrupt which had been assigned to creditor, referee's order, if amended to include collateral "claimed to be held," would be valid to assign such claims notwithstanding statute to effect that transfers of claims against United States were void. In re Pottasch Bros. Co. (C.C.A.N.Y.1935) 79 F. 2d 613, 101 A.L.R. 1182.

Where in settlement of claim against bankrupt estate trustee in bankruptcy released claim to collateral "held or claimed to be held" by creditor, but referee's order approving settlement inadvertently omitted collateral "claimed to be held," thereby excluding claims against United States for excess customs duties paid by bankrupt which had been assigned to creditor, assignment of which was void under federal statute, order should be corrected so as to conform to decision actually made and to entitle creditor to proceeds of claims for excess customs duties in hands of trustee. Id.

34. —— Moneys due on contracts

Assignments in public contractor's surety bonds, which assigned to the surety the contractor's claims against the government for sums due on the contract whenever the surety should be compelled by default of the contractor to fulfill its obligations, are invalid against the United States, but they enable the surety to prevail over the contractor if there is contest between them. U. S. v. Munsey Trust Co. of Washington, D. C., 1947, 67 S.Ct. 1599, 332 U.S. 234, 91 L.Ed. 2022.

Where lease of land to Government for air to ground gunnery range entitled owner and assigns to recover damages to standing timber in addition to rental value paid and after termination of the leases the owner sold land to purchasers without knowledge of value of timber destroyed, owner's subsequent assignment to purchasers of claims against Government arising out of the covenants of the lease were not violative of provisions of this section. U. S. v. Jordan, C.A.Tenn.

1951, 186 F.2d 803, affirmed 72 S.Ct. 305, 342 U.S. 911, 96 L.Ed. 682.

Indebtedness of ship repair company to United States for unpaid withholding and unemployment taxes due as result of work done in performance of contract with Navy Department, was not so independent of contract as to preclude Government from offsetting balance due to repair company under contract against indebtedness after repair company had assigned to plaintiff proceeds payable under contract, as against contention that offset was not justified under this section providing that, if so provided by contract, payments to assignee of claim arising under contract with Navy Department shall not be subject to set-off for indebtedness arising independently of contract. Central Bank v. U. S., Ct. Cl.1952, 105 F.Supp. 992.

Assignments by contractor to its surety on performance bond and bond to pay for labor and materials, of any funds due from United States when surety should be compelled to fulfill bond obligations, was void where surety never attempted to assert any rights under assignment, and therefore allowance of surety's claim for amount which it was required to pay to subcontractors on default of contractor, out of fund awarded to contractor from United States after contractor was adjudged a bankrupt, was not void on ground that it violated this section declaring void all assignments of claims against the government prior to allowance. In re Cummins Const. Corp., D.C.Md.1949, 81 F.Supp. 193.

Contractor's assignment to his surety of money arising out of construction contract with United States held invalid in view of this section. Maryland Casualty Co. v. Lincoln Bank & Trust Co. (D.C. Ky.1937) 18 F.Supp. 375.

Where contractor entered into a unit-price contract with the Government for the construction of a lock and dam across the Allegheny River, and upon appointment of receivers for the contractor, during progress of the work, plaintiff, as surety on contractor's performance bond, entered into a supplemental contract with the Government and the receivers to take over and complete the work in accordance with the original contract, the supplemental contract did not amount to an assignment by the receivers of a claim against the Government within the meaning of this section. Fidelity & Deposit Co. of Md. v. U. S., 1946, 103 Ct.Cl. 340.

If subcontractor did have a claim against the Government, he could not transfer that claim to the price contractor, since assignment of such claims is forbidden by this section. Severin v. U. S., 1943, 99 Ct.Cl. 435, certiorari denied 64 S.Ct. 1045, 322 U.S. 733, 88 L.Ed. 1567.

Where plaintiff is not the original party with whom the United States made the contract upon which liability, if any, arises, and the voluntary transfer to plaintiff of the claim in question, growing out of the cancellation of said contract by defendant, comes within the provisions of this section, and plaintiff is not entitled to recover. Bolivar Cotton Oil Co. v. U. S., 1943, 95 Ct.Cl. 182.

Where the contract was made with another corporation, all of the property of which was sold to the plaintiff, and where upon such sale the plaintiff rests its title and right to the claim in suit, plaintiff by such sale acquired no interest in the claim upon which plaintiff is entitled to bring suit against the United States. Id.

35. —— Claims for unlicensed use of patented invention

To same effect as original annotation see Olsson v. U. S. (1931) 72 Ct. Cl. 72.

This section does not apply to the assignment of a claim against the United States which is created by section 68 of Title 35, as amended in 1918, in so far as that section deprives the owner of the patent of a remedy against the infringing private contractor for infringement thereof, and makes the Government indemnitor for its manufacturer or contractor in the infringements. Richmond Screw Anchor Co. v. U. S. (1928) 48 S. Ct. 194, 275 U.S. 331, 72 L.Ed. 303.

Claims against government for unlicensed use of patent held to pass with assignment of patent. National Electric Signaling Co. v. U. S. (1933) 76 Ct. Cl. 545.

39½. —— Occupancy of building, damages resulting from

For the period of occupancy prior to plaintiff's purchase of the property plaintiff is not entitled to recover for damages to the building since plaintiff's claim for such period would be under assignment. Elizabeth Smith v. U. S., 1942, 96 Ct.Cl. 326.

43¼. —— Tax claims

Indebtedness of contractor to United States for withholding taxes and federal unemployment taxes withheld during performance of contract with Navy Department arose "independently" of such contract, within meaning of this section, and, therefore, United States was not entitled to set off claim made by assignee of the proceeds of the Navy Department contract against government's claim for such taxes. Central Bank v. U. S., Ct. Cl.1953, 73 S.Ct. 917.

Under this section prohibiting assignment of claims against the United States, where assignment by taxpayers of right to refund was made long prior to time that overpayment was determined, allowed and certified, assignee could not sue under the assignment nor were the rights of heirs after assignee's death any greater than those of assignee. Wooton v. U. S., 1949, 86 F.Supp. 143, 114 Ct.Cl. 608, certiorari denied 70 S.Ct. 517, 339 U.S. 903, 94 L.Ed. 1333.

43½. —— Tort claims against United States

The assignment by vendors to purchasers of any claim of vendors against United States for any damage caused to the property was invalid under this section. U. S. v. Shannon, S.C.1952, 72 S.Ct. 281, 342 U.S. 288, 96 L.Ed. 321, separate opinion 72 S.Ct. 286, 342 U.S. 288, 96 L.Ed. 321.

Where purchasers taking assignment of any claim of vendors against government for damage to the property paid $30 per acre for the land and buildings and the claim, and adjoining land was worth $100 an acre or more, and the land sold comprised the best farm in the county, and there was no unconscionable conduct on the part of government agents and they had no part in the making of the assignment and the first dealing between purchasers and government agents occurred at least six weeks after assignment was executed, assignment could not be upheld on theory that hardship would otherwise result. Id.

Where losses as result of collision between automobile and army truck were paid in part only by automobile indemnity insurer, which was interested only in a part of each of three tort claims against federal government arising out of the collision, and each of claimants was in court, so that there was no splitting of causes of action for purpose of trial, trial court properly refused to dis-

miss insurer out of the case under this section. U. S. v. Hill, C.A.Tex.1949, 174 F.2d 61.

This section has reference to voluntary transfers or assignments of claims against the United States, and not to transfers by operation of law or to equitable subrogation, and does not bar an insurer-subrogee from maintaining suit under the Federal Tort Claims Act, section 921 et seq. of former Title 28, against the United States. State Farm Mut. Liability Ins. Co. v. U. S., C.A.Mass.1949, 172 F.2d 737.

This section has no application to suits by subrogees under the Tort Claims Act, section 921 et seq. of former Title 28. U. S. v. South State Highway Dept., C.A. S.C.1948, 171 F.2d 893.

Assignment to insurer of insured's claim against United States for destruction of insured dwelling by United States airplane to the extent of amount paid insured under aircraft and fire policy did not preclude insurer from maintaining as subrogee action against United States under Federal Tort Claims Act, section 921 et seq. of former Title 28, for amount paid under policy, notwithstanding this section. National Am. Fire Ins. Co. of Omaha v. U. S., C.A.Cal.1948, 171 F.2d 206.

This section, prescribing method by which claims upon the United States may be assigned, did not apply to compensation insurer who became subrogee of employee injured as result of negligence of post office department employee under McKinney's New York Workmen's Compensation Law, § 29, providing that failure of employee to commence action against United States within one year after accident operates as assignment of cause to insurer. Ætna Cas. & Sur. Co. v. U. S., P. O. Dept., C.A.N.Y.1948, 170 F.2d 469, affirmed 70 S.Ct. 207, 338 U.S. 366, 94 L.Ed. 171, 12 A.L.R.2d 444.

Where automobile collided with army truck and motorist was paid damages by his collision insurer, this section did not forbid action by insurer against United States under Federal Tort Claims Act, section 931(a) of this title. Old Colony Ins. Co. v. U. S., C.C.A.Ohio 1948, 168 F.2d 931.

This section which has reference only to voluntary assignments of claims against the United States and not to transfers of title by operation of law, does not preclude insurance companies which have paid amount of loss to the insured from intervening in a subsequent action by the insured or his assignees to recover the amount of loss from the United States under the Federal Tort Claims Act, section 921 et seq. of Title 28. Employers' Fire Ins. Co. v. U. S., C.C.A. Fla.1948, 167 F.2d 655.

This section is applicable only to contract claims, and does not bar action by subrogee under Federal Tort Claims Act, section 921 et seq. of Title 28. Town of Amherst v. U. S., D.C.N.Y.1948, 77 F. Supp. 80.

Subrogation is not a "transfer" or "assignment" within this section condemning transfers and assignments of claims against the United States and subrogee is not thereby precluded from suing the United States under Federal Tort Claims Act, section 921 et seq. of Title 28. Insurance Co. of North America v. U. S., D.C.Va.1948, 76 F.Supp. 951.

Where insurer of motortruck, damaged by negligent operation of government vehicle, paid part of damages under subrogation agreement, and action for damages was brought against government under Federal Tort Claims Act, section 921 et seq. of Title 28, by insured to their own use and to use of insurer, the subrogation agreement did not constitute an "assignment of claim" prohibited by this section. Grace, to Use of Grangers Mut. Ins. Co., v. U. S., D.C.Md.1948, 76 F.Supp. 174.

Assignment to insurer of claim against United States for destruction of insured building by fire caused by army aircraft crash would be void under this section, though such assignment was equitable or by operation of law of subrogation. Cascade County, Mont., v. U. S., D.C.Mont. 1948, 75 F.Supp. 850.

Owner of insured automobile which was struck by truck being operated by Post Office Department, after receiving assignment of insurance company's interest arising out of its payment to owner for damages to automobile except the first $50, was real party in interest as to entire claim for damages to automobile and loss of wages as result of the accident and could proceed alone against the United States under Federal Tort Claims Act, section 921 et seq. of Title 28, to recover entire amount, and action was not barred by this section. Forrester v. U. S., D.C.Wis.1947, 75 F.Supp. 272.

This section applies only to voluntary assignments of demands against the government and does not embrace subrogation and other cases where a transfer of title has occurred by operation of law, and hence did not preclude automobile insurer as subrogee of automobile owner from suing the United States under Federal Tort Claims Act, section 921 et seq. of Title 28. Wojciuk v. U. S., D. C.Wis.1947, 74 F.Supp. 914.

Tort claims for damages from collision between automobile and army truck were not within this section. Hill v. U. S., D.C.Tex.1947, 74 F.Supp. 129, set aside 171 F.2d 404, reversed on other grounds 174 F.2d 61.

46½. Contingent fee to attorney

Where attorney under written agreement was to be compensated on contingent fee basis for services rendered in obtaining a recovery against United States for expropriation of contracts for construction and delivery of two ships by United States Shipping Board Emergency Fleet Corporation, claim was not against fleet corporation but was a claim against United States which could not be assigned, and attorney was not entitled to pay income tax on sum received under agreement on theory that agreement made him assignee of a claim and that amount of his fees constituted capital gains. Ansorge v. C. I. R., C.C. A.2, 1945, 147 F.2d 459.

Where attorney under written agreement was to be compensated on contingent fee basis for legal services rendered in seeking recovery against United States of claim based on expropriation of contracts for construction of ships, sums received by attorney under agreement were taxable as ordinary income and could not be taxed as capital gains on theory that attorney was assignee of a claim against United States, since such claims may not be assigned. Id.

Contract not witnessed or acknowledged, whereby veteran agreed to pay attorney portion of veteran's war risk insurance as attorney's fee for prosecuting claim on policy, held void as attempted assignment of claim against United States. Conlon v. Adamski (1935) 77 F.(2d) 397, 64 App. D. C. 274.

Where attorneys contracted with state to prosecute a claim against the Federal Government on a contingent fee basis, the lien on the recovered fund for services rendered was not void under this section, as this section does not apply where the fund had been paid over by the federal government, and it was

no longer concerned in the litigation. Button's Estate v. Anderson, 1942, 28 A. 2d 404, 112 Vt. 531, 143 A.L.R. 195.

Contingent fee contract under which attorneys were to prosecute claims against United States was not invalid because violative of this section where private act ordering payment of claims specifically authorized a 10 per cent. fee as provided by contract. Hollister v. Ulvi, 1937, 271 N.W. 493, 199 Minn. 269.

A contract between attorneys at law and a federal income taxpayer providing for the services of attorneys before the Internal Revenue Department to ascertain the amount of taxes that should be paid and which provides that the compensation of attorneys shall be a sum equal to 15 per cent. of the amount of reduction of unpaid tax claimed by the government, and 15 per cent. of the amount refunded to the taxpayer by the government for taxes already paid, is not illegal nor against public policy. Shouse v. Consolidated Flour Mills Co. (1929) 277 P. 54, 128 Kan. 437.

46¾. Claim to seized cargo of liquor

Transfer of interest in cargo of liquor under seizure by federal government was void. In re Cargo of Intoxicating Liquors (D. C. N. Y. 1929) 40 F.(2d) 72.

Assignees of interest in cargo of liquor under seizure by government were not parties in interest authorized to petition for forfeiture proceedings or return of cargo. Id.

47. Right of assignor to repudiate assignment

Corporation which assigned claim against government under assignment not complying with statute could repudiate assignment and bring action on claim as owner thereof. H. M. O. Lumber Co. v. U. S. (D. C. Mich. 1929) 40 F.(2d) 544.

50. Equitable rights of assignee

Assignment to village of moneys payable out of condemnation award for certain land in satisfaction of taxes against other land was an "equitable assignment" if not a "legal assignment" and created a "lien" on the moneys awarded when they became available to parties executing the assignment. U. S. v. Certain Lands in Town of Highlands, N.Y., D. C.N.Y.1943, 49 F.Supp. 962.

51. Effect as between parties to assignment

The provisions of this section governing assignments of claims against the government are for protection of the government and not for regulation of equities of claimants as between themselves. McKenzie v. Irving Trust Co., N.Y.1945, 65 S.Ct. 405, 323 U.S. 365, 89 L.Ed. 305, 57 Am.Bankr.Rep.N.S. 267.

A transfer of fund by government contractor, after payment by United States is perfected, is not within this section but is of no concern to anyone except the parties to the transaction irrespective of time of assignment or manner of its making. National Refining Co. v. U. S., C.C.A.Mo.1947, 160 F.2d 951.

An assignment of claim against United States is valid as between parties thereto notwithstanding this section. Bank of California, National Ass'n v. Commissioner of Internal Revenue, C.C. A.1943, 133 F.2d 428.

Assignments of claims upon the United States before their allowance are valid as against assignor, notwithstanding this section declaring such assignments void, which section is for protection of the United States. California Bank v. U. S. Fidelity & Guaranty Co., C.C.A. Cal.1942, 129 F.2d 751.

Although assignment by government contractor to surety of contractor's rights in and to all deferred payments, retained percentages and all moneys and property that might be due and payable to contractor at time of any breach or default, is by force of this section void as against United States, it is enforceable between parties and courts will recognize equities created thereby. Royal Indem. Co. v. U. S., 1950, 93 F.Supp. 891, 117 Ct.Cl. 736.

This section pertaining to validity of assignment of claims against the United States affords no protection to parties to the assignments, and prohibition of this section against assignment does not nullify the contractual rights of the parties thereto as between themselves, and neither party may resort to the protection of this section as against the other. In re Webber Motor Co., D.C.N.Y.1943, 52 F.Supp. 742, 55 Am.Bankr.Rep.N.S. 340.

Under this section an assignment, at least as between parties thereto, effects an inchoate transfer of the assigned rights or property, even though there must thereafter be compliance with the statutory conditions, before the assignment becomes enforceable. McKenzie v. Irving Trust Co., 1944, 55 N.E.2d 192, 292 N.Y. 347, affirmed 65 S.Ct. 405, 323 U.S. 365, 89 L.Ed. 305.

53. Effect of assignment as to rights of a surety

Government contractor's assignments to bank, in conformity with this section, of amounts payable under construction contract were valid and binding as between parties, and also as against contractor's surety relying on conditional assignment, of which no notice was given, to take effect in event of contractor's default. Coconut Grove Exchange Bank v. New Amsterdam Cas. Co., C.C.A.Fla.1945, 149 F.2d 73.

A surety, in writing government contractor's bond, does so in light of this section permitting assignment to bank or other financing institution of amounts payable under contract, and will be held to have accepted its applicable provisions. Id.

Assignment by government contractor to surety of all moneys that might be due under contract at time of default was not within permissive terms of this section because not made to a bank or other financing institution, and assignment was void as against the United States under original section. Royal Indem. Co. v. U. S., 1950, 93 F.Supp. 891, 117 Ct.Cl. 736.

Bank which financed government contractor was charged with knowledge of law requiring payment and performance bonds of all government contractors and when it took its assignment and advanced its money after contract had been entered into, it was put upon notice as to possibility of an equity possessed by surety in proceeds of contract. Id.

Where provision in postal employee's loan application that employee's pay checks were to be held by treasurer of corporate payee for monthly payments on note executed by employee was valid, indorsers were liable to corporate payee only for amount which would have been due on note at time of employee's resignation from Post Office Department if provision had been carried out. Richmond Postal Credit Union v. Booker, 1938, 195 S.E. 663, 170 Va. 129.

Where bank received check from government pursuant to power of attorney executed by contractor to send check for monthly estimate on construction job to bank, with which contractor had agreement as a general depositor, and bank also had notice from surety for contractor of assignment by contractor to surety of amount due contractor on project, bank was liable to surety for

balance of check remaining after bank applied part of proceeds of check to contractor's indebtedness to bank on demand notes securing advances for labor for which surety otherwise would have been obligated to pay. Trinity Universal Ins. Co. v. First State Bank, 1944, 183 S.W.2d 422, 143 Tex. 164.

54. Validity of assignments as against trustee in bankruptcy

Where assignment of War Department order by bankrupt to bank to secure advance to finance contract with War Department was void as to government for failure to comply with this section pertaining to assignment of claims against government but was valid as between the parties, and after the filing of involuntary petition in bankruptcy government paid to receiver, who was later elected trustee, amount due on order, in absence of fraud or preferential assignment, trustee acquired no greater right to such sum than bankrupt had and was required to pay such sum to bank. In re Webber Motor Co., D.C.N.J 1943, 52 F.Supp. 742, 55 Am.Bankr.Rep.N.S. 340.

Assignments by bankrupt of accounts receivable from the federal government as collateral security for loans made to bankrupt were void as against bankruptcy trustee, even though they were made for a present consideration and no preference was created, where assignments did not comply with provisions of this section prescribing requirements for valid assignments of claims against the government, claims were not allowed by the government when the assignments were made, and warrants did not issue thereon until after adjudication in bankruptcy. In re Meadow Sweet Farms, D.C. N.Y.1940, 32 F.Supp. 119.

A bona fide assignment of money to become due to corporation from the government under construction contract, which was made more than four months before corporation's bankruptcy, was not inoperative because of delay until a date within the four month period, in obtaining consent of Secretary of War to assignment or in filing assignment with various government departments. McKenzie v. Irving Trust Co., 1943, 42 N.Y. S.2d 551, 266 App.Div. 599, appeal denied 44 N.Y.S 2d 264, 266 App.Div. 948, motion denied 52 N.E.2d 601, 291 N.Y. 722, affirmed 55 N.E.2d 192, 292 N.Y. 347, affirmed 65 S.Ct. 405, 323 U.S. 365, 89 L.Ed. 305.

Where a bona fide assignment of money to become due to corporation from government under construction contract was made more than four months before corporation's bankruptcy, payment made to assignee exactly four months before bankruptcy was not voidable as a "preference" because of delay until date within the four month period in obtaining consent to assignment by Secretary of War and filing of assignment with government departments as required by this section. Id.

Where contractor's claim against government under construction contract was assigned and contractor received payment from government more than 4 months before contractor's bankruptcy, but conditions of this section, permitting an assignment of claims against government were not complied with until less than 4 months before bankruptcy, the payment made by contractor to assignee exactly 4 months before bankruptcy was not voidable as a "preference" on theory that the assignment had not been "perfected" within section 96(a) of Title 11 more than 4 months before bankruptcy. McKenzie v. Irving Trust Co., 1944, 55 N.E.2d 192, 292 N.Y. 347, affirmed 65 S.Ct. 405, 323 U.S. 365, 89 L.Ed. 305.

55. Validity as between different assignees

Where surety on government contractor's bond did not perfect the assignment of money to become due to contractor from the government by giving notices and procuring the consent as required by this section, and surety did not receive proceeds of contract which were paid to contractor's creditor which had no notice of the prior assignment of the surety, the creditor was entitled to retain the assigned money which it received without notice of the prior assignment to the surety. McKenzie v. Irving Trust Co., N.Y.1945, 65 S.Ct. 405, 323 U.S. 365, 89 L.Ed. 305, 57 Am.Bankr. Rep.N.S. 267.

Congress, in attaching conditions to contractor's right to assign claims against the United States, had no intention to dictate to contractor what he should do with moneys received on his contract and after contractor has fully complied with conditions, the purpose of imposing any limitation on contractor's freedom to assign claims is fulfilled and government has no interest in any controversy between successive assignees of fund or claim or between persons asserting conflicting liens in the fund. McKenzie v. Irving Trust Co., 1944, 55 N.E.2d 192, 292 N.Y. 347, affirmed 65 S.Ct. 405, 323 U.S. 365, 89 L.Ed. 305.

59. Burden of proof of transfer

The surety of a defaulting government contractor bringing action for exoneration, etc., had burden of alleging and proving facts establishing equitable right superior to legal right of bank to which government, under contractor's valid statutory assignments, had paid funds due on construction contract. Coconut Grove Exchange Bank v. New Amsterdam Cas. Co., C.C.A.Fla.1945, 149 F.2d 73.

Taxpayer seeking to recover alleged excessive taxes paid by another corporation whose assets it purchased had burden of showing how it acquired claim and validity thereof against United States. Dalton Foundries, Inc. v. U. S. (Ct. Cl. 1932) 56 F.(2d) 483.

60. Subrogation

This section does not operate to bar an insurer's right of equitable subrogation. American Fidelity & Cas. Co. v. All Am. Bus Lines, C.A.Okl.1950, 179 F.2d 7.

Where government contractor assigned to bank 90 per cent of amounts to be received by contractor from the government as payment of amounts loaned to contractor by bank to enable contractor to perform the contract, and thereafter the contractor defaulted and the government procured others to finish the work, and contractor's surety was required to pay certain sums of money, assignee of bank, rather than surety, was entitled to money which represented what was owing by the government on final settlement. General Cas. Co. of America v. Second Nat. Bank of Houston, C.A.Tex. 1950, 178 F.2d 679.

Contractor's surety which paid no claims for labor or material and furnished no money for completion of contract and had no valid assignment of progress payments collected by contractor's assignee under invalid assignment held not entitled to subrogation to rights of laborers and materialmen. Martin v. National Surety Co. (C.C.A.Mo.1936) 83 F.2d 135, affirmed 57 S.Ct. 531, 300 U.S. 588, 81 L.Ed. 822.

61. Third party rights

Assignments of claims upon the United States before their allowance would have

been valid as against third party to whom assignor paid money received from the United States on claims, if such third party had had notice of assignments before assignor incurred indebtedness to third party. California Bank v. U. S. Fidelity & Guaranty Co., C.C.A.Cal.1942, 129 F.2d 751.

Assignments of claims upon the United States before their allowance were void as to third party to whom assignor, to satisfy bona fide indebtedness incurred before third party had notice of assignments, paid money received from the United States on claims. Id.

62. Bank assignments

Where manufacturer of salad dressing which knew that it was about to be awarded a contract by the United States to manufacture salad dressing for the Army needed financing, and it endeavored to procure financing from corporation, and corporation desired to secure itself by assignment of manufacturer's rights under contract with the United States and of money to be received thereunder, and because this section and section 15 of Title 41 provides that moneys coming due under contract executed by the United States may be assigned only to a financing institution, corporation arranged with bank for financing, and bank advanced $10,000 to manufacturer and received an assignment, and $75,000 contract was awarded by the Army to the manufacturer, and thereafter manufacturer filed a petition for reorganization pursuant to Bankruptcy Act, section 501 et seq. of Title 11, and trustees performed contract with Army, bank was entitled to $10,000 out of amount owing by United States to manufacturer, and trustees were not entitled to the entire $75,000. In re Italian Cook Oil Corp., C.A.N.J.1951, 190 F.2d 994.

Assignments by contractor to bank of claims against the United States for work for which bank had advanced money, were valid under provisions of this section expressly excepting a bank, trust company or other financial institution from prohibition against assignments of certain claims agaist the United States, but assignments made to contractor's surety company did not come under the exception and were not valid. General Cas. Co. of America v. Second Nat. Bank of Houston. C.A.Tex.1950, 178 F.2d 679.

The surety of a defaulting government contractor showed no equity superior to right of bank to which government, pursuant to contractor's assignments, paid funds due under construction contract, unless surety showed that money lent by bank was not used to pay for labor or material, constituting obligations for which surety would have been liable. Coconut Grove Exchange Bank v. New Amsterdam Cas. Co., C.C.A.Fla.1945, 149 F.2d 73.

That government, under construction contractor's assignments to bank, paid bank more than amount due bank was not ground for complaint by contractor's surety, since this section contemplates assignment to only one party, covering all amounts payable under contract. Id.

63. Assignee's rights

Bank which received assignment of claim arising out of public contract pursuant to this section and gave notice thereof in manner and to officials required by section was entitled to that degree of protection ordinarily given to innocent assignee who acts in good faith. Central Nat. Bank of Richmond, Va. v. U. S., 1950, 91 F.Supp. 738, 117 Ct.Cl. 389.

Taxpayers could not by assignment vest in assignee any greater right in claim against the government for overpayment of taxes than was possessed by them, so that indebtedness to the United States for other taxes in amount exceeding claim for overpayment precluded recovery of overpayment by taxpayers, and likewise by heirs of assignee. Wooton v. U. S., 1949, 86 F.Supp. 143, 114 Ct.Cl. 608, certiorari denied 70 S.Ct. 517, 339 U.S. 903, 94 L.Ed. 1333.

Under this section and section 15 of Title 41, plaintiff by its assignment from the contractor could acquire no greater rights in respect of payments or claims arising under the assigned contract than its assignor, the contractor, had; and it may not, therefore, recover any more than the contractor could have recovered in the absence of the assignment. Modern Indus. Bank v. U. S., 1944, 101 Ct.Cl. 808.

64. Defenses

Defense that an assigned claim against the United States for return of overpaid taxes was improperly assigned was not applicable to a proceeding before the Court of Claims where it had not been raised by the United States. Continental Oil Co. v. U. S., 1945, 62 F.Supp. 876, 104 Ct.Cl. 795, certiorari denied 66 S.Ct. 1118, 328 U.S. 847, 90 L.Ed. 1620.

65. Erroneous payment

Where erroneous payment is made by government, it is no bar to rightful claimant. Central Nat. Bank of Richmond, Va. v. U. S., 1950, 91 F.Supp. 738, 117 Ct.Cl. 389.

Where claim under public contract was assigned and government received timely notice of such assignment, ministerial officers such as central disbursing officer could not thereafter arbitrarily and without notice to assignee pay money over to assignor. Id.

66. Parties

An assignee of damage claim against government cannot avoid this section by joining his assignor as a party defendant or as an unwilling party plaintiff. U. S. v. Shannon, S.C.1952, 72 S.Ct. 281, 342 U.S. 288, 96 L.Ed. 321, separate opinion 72 S.Ct. 286.

§ 206. Claims of disloyalists

Section is now obsolete and has been omitted from the Code.

§ 208. Payment to officers for horses lost. [Repealed.]

This section was repealed by Act Dec. 16, 1930, c. 14, § 1, 46 Stat. 1028.

§§ 209–214. Repealed. May 29, 1945, c. 135, § 3, 59 Stat. 225

§§ 215–217. Repealed. Aug. 2, 1946, c. 753, Title IV, § 424(a), 60 Stat. 846.

Section 215a, Act July 25, 1942, c. 524, Title 1, 56 Stat. 707, which related to claims in connection with the Office for Emergency Management, is now covered by chapter 20 of Title 28.

Act July 3, 1943, c. 189, § 4, 57 Stat. 373, which provided that former sections 215, 216, 217, should be inapplicable to the War Department after July 3, 1943, was repealed by Act Aug. 2, 1946, c. 753, Title IV, § 424 (a), 60 Stat. 846.

Inapplicable to Coast Guard. The second sentence of section 5 of Act Dec. 28, 1945, c. 597, as added Mar. 20, 1946, c. 104, 60 Stat. 56, which provided that former sections 215–217 of this title should be inapplicable to the Coast Guard sixty days after Dec. 28, 1945, was repealed by Act Aug. 4, 1949, c. 393, § 20, 63 Stat. 561.

Inapplicable to Navy Department. Section 4 of Act Dec. 28, 1945, c. 597, 59 Stat. 662, provided in part that former sections 215–217 "shall be inapplicable to the Navy Department sixty days after Dec. 28, 1945." Said provisions are now covered by section 223d of this title.

§§ 218–222b. Repealed. May 29, 1945, c. 135, § 3, 59 Stat. 225.

Section 222a, as added to Act Mar. 3, 1885, c. 335, § 5a, by Act July 3, 1943, c. 189, § 6, 57 Stat. 374, related to the delegation of authority by the Secretary of War to settle claims and the conclusiveness of settlements.

Section 222b, as added to Act Mar. 3, 1885, c. 335, § 5a, by Act July 3, 1943, c. 189, § 6, 57 Stat. 374, related to the application of former sections 218–222a of this title to civilian personnel and employees.

§ 222c. Settlement of claims for loss of property in military, naval, air, or Defense Department service—Determination; limitation

(a) The Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, and such other officer or officers as they may designate for such purposes and under such regulations as they, respectively, may prescribe, are authorized to consider, ascertain, adjust, determine, settle, and pay any claim not in excess of $2,500 against the United States, including claims not heretofore satisfied, arising on or after December 7, 1939, of military personnel and civilian employees of the Department of the Army or of the Army, and including civilian employees of the War Department during its existence, of military personnel and civilian employees of the Department of the Navy or of the Navy, and of military personnel and civilian employees of Department of the Air Force or of the Air Force, when such claim is substantiated, and the property determined to be reasonable, useful, necessary, or proper under the attendant circumstances, in such manner as the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, as to the military personnel and civilian employees of their respective Departments and services, may by regulation prescribed, for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service, or to replace such personal property in kind: *Provided*, That the damage to or loss, destruction, capture, or abandonment of property shall not have been caused in whole or in part by any negligent or wrongful act on the part of the claimant, his agent, or employee, and shall not have occurred at quarters occupied by the claimant within the continental United States (excluding Alaska) which are not assigned to him or otherwise provided in kind by the Government: *And provided further*, That the Secretary of Defense, and such other officer or officers as he may designate for the purpose, and under such regulations as he may prescribe, are authorized to exercise with respect to claims of civilian employees of the Department of Defense not hereinbefore enumerated, arising on or after July 25, 1947, for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service, powers similar to those conferred upon the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force and their designees by sections 222c, 222d, and 223b of this title with respect to claims of military personnel and civilian employees of their Departments.

Payments to survivor

(b) The Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, and the Secretary of Defense, and their designees, respectively, in the event of the death of any person among the mili-

tary personnel or civilian employees enumerated in subsection (a) of this subsection, are authorized to consider, ascertain, adjust, determine, settle, and pay any claim, otherwise cognizable under sections 222c, 222d, and 223b of this title, presented by the survivor of such person for damage to or loss, destruction, capture, or abandonment of the personal property of such person, regardless of whether such damage, loss, destruction, capture, or abandonment occurred concurrently with or subsequent to such death.

Definition

(c) As used in sections 222c, 222d, and 223b of this title the term "survivor" means surviving spouse, child or children, father and/or mother, or brothers and/or sisters of the decedent, and claims by survivors shall be settled and paid in that order of procedence.

Time limitation for presentation of claims

(d) Every claim cognizable under sections 222c, 222d, and 223b of this title, shall be forever barred unless presented in writing within two years after such claim accrues or within one year after the date of the enactment of said sections, whichever is later: *Provided*, That, if a claim accrues in time of war or in time of armed conflict in which Armed Forces of the United States are engaged, or if war or such armed conflict intervenes within two years after it accrues, it may, on good cause shown, be presented within two years after such good cause ceases to exist, but not later than two years after peace is established or the armed conflict terminates. The dates of commencement and termination of an armed conflict for the purpose of this subsection shall be as established by concurrent resolution of the Congress or by determination of the President: *And provided further*, That any claim cognizable under said sections which has not heretofore been presented for consideration, or has been presented for consideration and disapproved for the reason that the claimant did not file such claim within the time authorized by law, or any claim cognizable hereunder of any survivor which has not heretofore been presented for consideration, or has been presented for consideration and disapproved for the reason that heretofore such survivor acquired no right of recovery under said sections, may, at the written request of the claimant made within one year from July 3, 1952, be considered or reconsidered and settled in accordance with the provisions hereof.

Conclusiveness of settlement; reports

(e) Any settlement made by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of Defense, or their designees, under the authority of sections 222c, 222d, and 223b of this title and such regulations as they, respectively, may prescribe hereunder, shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary. All such settlements shall be reported to the Congress annually by the heads of the departments concerned and the report shall state with respect to each settlement the name of the claimant, the amount claimed, and the amount paid. May 29, 1945, c. 135, § 1, 59 Stat. 225, amended July 26, 1947, c. 343, Title II, § 205, (a), 61 Stat. 501; July 3, 1952, c. 548, § 1, 66 Stat. 321; Aug. 1, 1953, c. 303, § 1, 67 Stat. 317.

1953 Amendment. Subsec. (d) amended by Act Aug. 1, 1953, which provided that the two-year time limitation for presentation of claims obtaining in time of war should apply to periods of armed conflict as well.

1952 Amendment. Act July 3, 1952, amended section generally by making entire former section subsection (a) of this section and making it applicable to the Navy, Air Force, and Department of Defense, and by adding subsections (b)–(e).

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

Short title. Section 5 of Act May 29, 1945, cited to text, provided: "This Act [sections 222c, 222d and 223b of this title] may be cited as the 'Military Personnel Claims Act of 1945'."

Repeals. Joint Res. July 3, 1952, c. 570, § 2(b), 66 Stat. 334, which purported to amend this section was repealed, effective July 3, 1952, by section 2 of Act Aug. 1, 1953.

Termination of temporary extension. Section 2 of Joint Res. Mar. 31, 1953, c. 13, 67 Stat. 18, provided that the extension of certain emergency powers from April 1, 1953 until July 1, 1953, effected by section 1 of said joint resolution, did not apply to section 2(b) of Joint Res. July 3, 1952, c. 570, 66 Stat. 334. Said section 2(b) of Joint Res. July 3, 1952 purported to amend this section by permitting the presentation of claims until April 1, 1953.

Repeal of prior Acts continuing section. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of said Joint Res. July 3, 1952.

Congressional Comment and Legislative History: For legislative history and purpose of Act May 29, 1945, cited to text, see 1945 U.S.Code Cong.Service, p. 715. See, also, Act July 3, 1952, 1952 U.S.Code Cong. and Adm.News, p. 1484; Act Aug. 1, 1953, 1953 U.S.Code Cong. and Adm.News, p. —.

1. Losses to which statute applicable

In this section, term "incident to their service" was not employed in any restricted sense to require that a compensable loss occur during performance of military duties or on military base, but was used liberally and in a general sense merely to indicate that the loss must bear some substantial relation to the claimant's military service. Fidelity-Phenix Fire Ins. Co. of N. Y. v. U. S., D.C.Cal. 1953, 111 F.Supp. 899.

Where a commissioned officer in the Regular Army of the United States was retired for disability incident to the service; and where under proper orders he was relieved from assignment and duty at his then post and directed to proceed to his home; and where in the shipment of his household goods and other personal property from said post to his home said household goods and property were damaged; it is held that plaintiff is entitled to recover under the provisions of former section 218 of this title. Brabson v. U. S., 1943, 95 Ct.Cl. 187.

An officer acting under military orders is "in the military service" within former section 218 of this title. Id.

In the instant case the plaintiff was traveling "under orders" and his property was being "transported by the proper agent or agency of the United States Government." Id.

Where baggage of Army officer was lost while being transported by the United States Army in an Army truck, manned by enlisted men, while said Army officer was traveling in a passenger car from one station to another pursuant to proper orders and in line of duty, the travel performed by claimant comes within subsection (3) of former section 218 of this title, and claimant is accordingly entitled to recover. Regnier v. U. S., 1941, 92 Ct.Cl. 437.

An army officer whose household goods and furniture were damaged or destroyed by action of flood waters, without fault or negligence on his part, while he was on continuous duty during flood emergency and in consequence of his giving his attention to the saving of human life and property belonging to the United States, was entitled to reimbursement. Dierking v. U. S., 1941, 92 Ct.Cl. 141.

Private property of an Army officer lost or damaged while in a private residence because no public quarters were available was "in the military service" within the meaning of the act of March 4, 1921. Jackson v. U. S., 1940, 90 Ct.Cl. 526.

Where plaintiff's property was not in public quarters, to which he was entitled under the law, because public quarters were not available, the requirement of former section 218 of this title that the private property be "in the military service" was met. Jonitz v. U. S., 1939, 89 Ct.Cl. 155.

The requirement of former section 218 of this title that the loss of personal property shall be "in the military service" was met where plaintiff was engaged (1) in saving human life, (2) in saving Government property and (3) in military duties in connection with the disaster which caused the loss of his personal property. Id.

Former section 218 of this title contains no language which can be construed as meaning that unless the property is within the boundaries of a Government reservation it is not in the military service. Id.

1a. Exclusiveness of remedy

If the loss of personal property for which claim is made against United States was incident to the claimants' service in the armed forces, reimbursement therefor must be sought under this section, regardless of who owns the property. Fidelity-Phenix Fire Ins. Co. of N. Y. v. U. S., D.C.Cal.1953, 111 F.Supp. 899.

Servicemen's trailer houses, having been permanently placed in trailer park which was located on air base and was regulated by Base Billeting Officer and was maintained by air force personnel, were "assigned" quarters within this section, which is the single comprehensive remedy for property losses of military personnel incident to their service, except those occurring at quarters in United States which are not "assigned" to them. Id.

1b. —— Federal Tort Claims Act

Where air force personnel whose automobiles were damaged by crash and explosion of air force bomber were reimbursed for non-insured losses under "public disasters" regulation promulgated pursuant to this section, servicemen's insurers, who, by other regulations, were prohibited from recovery under such Act of any payment to an insured for personal property loss sustained as an incident to service, were not entitled to pursue right of subrogation under Federal Tort Claims Act, section 1346(b) and section 2671 et seq. of Title 28. Fidelity-Phenix Fire Ins. Co. of N. Y. v. U. S., D.C.Cal.1953, 111 F.Supp. 899.

Notwithstanding enactment of the Federal Tort Claims Act, section 1346(b) and section 2671 et seq. of Title 28, it was manifestly intent of Congress that this section should remain as the single comprehensive remedy for property losses of military personnel incident to their service. Id.

Suits against the Government under Federal Tort Claims Act, section 1346(b) and section 2671 et seq. of Title 28, by insurers to recover for the service-connected property losses of military personnel are not authorized, in view of the Military Personnel Claims Act and regulations promulgated thereunder. Id.

2. Persons entitled to settlement

Loss of personal property of officer stored with quartermaster while officer was on overseas duty held not within former section 218 of this title. Curran v. U. S. (1928) 65 Ct.Cl. 26.

4. Extent and nature of jurisdiction conferred on treasury and war departments

Whether Secretary of War would be legally justified in ordering disbursing officer of the Army to make payment of claim approved by Secretary of War but previously disallowed by the Comptroller General, involves a matter of policy as to which it would not be proper for Attorney General to advise Secretary of War. 1935, 38 Op.Atty.Gen. 181.

Comptroller General is without authority to review findings of fact made by Secretary of War in adjudication of claims arising under this section. However, conclusion of the Secretary of War as to whether a particular claim under facts found comes within former section 218 of this title, is not binding on the Comptroller General, and he may review such claim to determine whether payment thereof is authorized by former section 218 of this title, his determination being subject to review by Court of Claims and, in a proper case, by Attorney General. Id.

§ 222d. Availability of appropriations

Such appropriations as may be required for the settlement of claims under the provisions of this section and sections 222c and 223b of this title are authorized. Appropriations now available to the Department of the Army and the Department of the Air Force for the settlement of claims under the provisions of said sections, and to the Department of the Navy for the settlement of claims under the provisions of sections 222f and 223d of this title, shall be available for the settlement of claims under the provisions of this section and sections 222c and 223b of this title. May 29, 1945, c. 135, § 2, 59 Stat. 225, amended July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501; July 3, 1952, c. 548, § 2, 66 Stat. 323.

"Act of March 3, 1885, (23 Stat. 350) as amended" referred to in text was formerly set out as sections 218-222b of this title, and was repealed by section 3 of Act May 29, 1945, cited to text.

1952 Amendment. Act July 3, 1952, amended section by extending its provisions to the Navy Department.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

Congressional Comment: For legislative history and purpose of Act May 29, 1945, cited to text, see 1945 U.S.Code Cong.Service, p. 715.

§ 222e. Repealed. July 3, 1952, c. 548, § 3, 66 Stat. 323.

Section, Act Dec. 28, 1945, c. 597, § 2, 59 Stat. 662; Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54; Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296; Joint Res. July 3, 1952, ch. 570, § 6, 66 Stat. 334, related to settlement of claims by Navy, and is now covered by section 222e of this title.

§ 222f. Availability of appropriations

Such appropriations as may be required for the payment of claims under the provisions of this section and sections 222e and 223d of this title are authorized. Appropriations available to the Navy Department shall be available for the settlement of claims by the Secretary of the Navy or his designees under the provisions of this section and sections 222e and 223d of this title. Dec. 28, 1945, c. 597, § 3, 59 Stat. 662.

Cross References. Disposition of abandoned personal property, see section 150e et seq. of Title 5, Executive Departments and Government Officers and Employees.

§ 222g. Repealed. Aug. 4, 1949, c. 393, § 20, 63 Stat. 561.

Section, Act Dec. 28, 1945, c. 597, § 5, as added Mar. 20, 1946, c. 104, 60 Stat. 56, related to settlement of claims of Coast Guard employees, etc., and is now covered by sections 490 and 645 of Title 14, Coast Guard.

Effective date. Repeal of section effective as of the first day of the third month after the month of approval, August 1949, see note set out preceding chapter 1 of Title 14, Coast Guard.

§ 222h. Applicability of sections 222e–222g and 223d to Coast and Geodetic Survey and Public Health Service

The provisions of sections 222e–222g and 223d of this title shall apply to the personnel of the Coast and Geodetic Survey and the Public Health Service when serving with the Navy. Dec. 28, 1945, c. 597, § 6, as added Mar. 20, 1946, c. 104, 60 Stat. 56.

Transfer of functions. The functions of all officers of the Department of Commerce and all functions of all officers and employees of such Department, were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 5, §§ 1, 2, eff. Mar. 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under

section 591 of Title 5, Executive Departments and Government Officers and Employees. The Coast and Geodetic Survey, referred to in this section, is an agency within the Department of Commerce.

Cross References. Disposition of abandoned personal property, see section 150e et seq. of Title 5, Executive Departments and Government Officers and Employees.

Congressional Comment: For legislative history and purpose of Act Mar. 20, 1946, cited to text, see 1946 U.S.Code Cong.Service, p. 1108.

§ 223. Settlement of claims for loss or damage to private property from operations, etc., of Army

Section, Acts June 30, 1922, c. 253, Title I, 42 Stat. 725; Mar. 2, 1923, c. 178, Title I, 42 Stat. 1386; June 7, 1924, c. 291, Title I, 43 Stat. 483; Feb. 12, 1925, c. 225, Title I, 43 Stat. 897; June 30, 1922, c. 253, Title I, 42 Stat. 725; Mar. 2, 1923, c. 178, Title I, 42 Stat. 1386; June 7, 1924, c. 291, Title I, 43 Stat. 483; Feb. 12, 1925, c. 225, Title I, 43 Stat. 897; Apr. 15, 1926, c. 146, Title I, 44 Stat. 259; Feb. 23, 1927, c. 167, Title I, 44 Stat. 1110; Mar. 23, 1928, c. 232, Title I, 45 Stat. 330; Feb. 28, 1929, c. 366, Title I, 45 Stat. 1354; May 28, 1930, c. 348, Title I, 46 Stat. 436; Feb. 23, 1931, c. 279, Title I, 46 Stat. 1282; July 14, 1932, c. 482, Title I, 47 Stat. 669; Mar. 4, 1933, c. 281, Title I, 47 Stat. 1576; Apr. 26, 1934, c. 165, Title I, 48 Stat. 620; Apr. 9, 1935, c. 54, Title I, § 1, 49 Stat. 127; May 15, 1936, c. 404, Title I, § 1, 49 Stat. 1284; July 1, 1937, c. 423, 50 Stat. 448; June 11, 1938, c. 347, 52 Stat. 648; Apr. 26, 1939, c. 88, 53 Stat. 599; June 13, 1940, c. 343, § 1, 54 Stat. 357; June 30, 1941, 6:20 p. m., E. S. T., c. 262, § 1, 55 Stat. 372; July 2, 1942, c. 477, § 1, 56 Stat. 615; July 1, 1943, c. 185, § 1, 57 Stat. 352, was consolidated in sections 222a, 222b, 223b, and 223c of this title by Act July 3, 1943, c. 189, 57 Stat. 373. The purpose of said Act was to "consolidate" into said sections of this title "all existing statutory provisions for the administrative settlement of claims other than claims under the Foreign Claims Act * * *" (section 224d of this title). Claims of civilian, in addition to military, personnel are thus also allowable under said Act. See Senate Report 243, May 17, 1943, 78th Congress; 1943 U.S. Code Cong.Service p. 2.131.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Cross References. Maneuvers, gun fire, etc., of Army, settlement of claims not exceeding $1000 for damages to private property caused by, see section 208 of Title 5, Executive Departments and Government Officers and Employees.

§ 223a. Repealed. April 22, 1943, c. 67, § 5, 57 Stat. 67

Section, Act April 18, 1918, c. 57, 40 Stat. 532, related to presentation of claims by inhabitants of France or any other European country not an enemy, for damages by American military forces.

§ 223b. Settlement of claims incident to activities of Army or Department of the Army

The Secretary of the Army, and, subject to appeal to the Secretary of the Army, such other officer or officers as he may designate for such purposes and under such regulations as he may prescribe, are authorized to consider, ascertain, adjust, determine, settle and pay in an amount not in excess of $1,000, where accepted by the claimant in full satisfaction and final settlement, any claim against the United States arising on or after May 27, 1941, when such claim is substantiated in such manner as the Secretary of the Army may by regulation prescribe, for damage to or loss or destruction of property, real or personal, or for personal injury or death, caused by military personnel or civilian employees of the Department of the Army or of the Army while acting within the scope of their employment, or otherwise incident to noncombat activities of the Department of the Army or of the Army, including claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government and claims for damages to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise: *Provided*, That the damage to or loss or destruction of property, or the personal injury or death, shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agent, or employee. No claim shall be settled under this section unless presented in writing within one year after the accident or incident out of which such claim arises shall have occurred: *Provided*, That if such accident or incident occurs in time of war, or if war intervenes within one year after its occurrence, any claim may, on good cause shown, be presented within one year after peace is estab-

lished, but if such accident or incident occurs after June 23, 1950, and before the termination of the national emergency proclaimed December 16, 1950, any claim may, on good cause shown, be presented within one year after the termination of that national emergency or August 1, 1953, whichever is earlier. July 3, 1943, c. 189, § 1, 57 Stat. 372, amended May 29, 1945, c. 135, § 1, 59 Stat. 225; June 28, 1946, c. 514, § 1, 60 Stat. 332; July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501; Joint Res. July 3, 1952, c. 570, § 2(c), 66 Stat. 334; Mar. 31, 1953, c. 13, § 1, 67 Stat. 18; June 30, 1953, c. 172, 67 Stat. 131.

1953 Amendment. Joint Res. June 30, 1953 amended second proviso of section by extending from July 1, 1953 to August 1, 1953 the time limitation on presentation of claims arising out of the Korean war.

Joint Res. Mar. 31, 1953, amended second proviso of section by extending from April 1, 1953 until July 1, 1953 the time limitation on presentation of claims arising out of the Korean war.

1952 Amendment. Joint Res. July 3, 1952, amended second proviso of section to allow the presentation of claims arising out of the Korean war. Said Joint Res. July 3, 1952, further provided that the section as amended shall apply to the Navy Department as provided for in section 223d of this title.

1946 Amendment. Act June 28, 1946, cited to text, amended section by raising the claim limitation from $500 to $1,000.

1945 Amendment. Act May 29, 1945, cited to text, amended section by omitting "damage to or loss or destruction of property of military personnel or civilian employees of the War Department or of the Army, for" following "claims for", "such persons" following "or death of", and "damage, loss, destruction" following "if such" in the next to the last sentence.

Effective date of 1952 Amendment. Section 7 of Joint Res. July 3, 1952, provided that the amendment of this section should take effect as of June 16, 1952.

Effective Date. Section 4 of Act May 29, 1945, cited to text, provided in part that the amendment of this section should be "effective as of the date of approval of said Act [Act July 3, 1943, cited to text]."

Repeal of prior Acts continuing section. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of said Joint Res. July 3, 1952.

Repeals. Act Aug. 2, 1946, c. 753, Title IV, § 424(a), 60 Stat. 846, repealed this section insofar as it concerned claims cognizable under sections 921 and 922 of Title 28 which are caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment but by section 424(b) of said Act, section 946 of Title 28, this section is specifically saved with reference to any claim which is not caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

1. Exclusive remedy

This section authorizing Secretary of War to settle claims for loss or destruction of property caused by military personnel or civilian employees incident to activities of War Department or Army was not exclusive remedy of tenants for loss or destruction of fences and goats or sheep under lease for army camp requiring United States to maintain fences after crossing by troops, and such tenants could sue United States under section 41(20) of Title 28. U. S. v. Huff, C.C.A.Tex.1948, 165 F.2d 720, 1 A.L.R.2d 854.

2. Construction with other laws

A settlement for injuries sustained by motorist in collision with War Department automobile under this former section whereby United States consented to payment of claims for reasonable medical, hospital and burial expenses arising out of accident caused by military personnel or civilian employees of War Department precluded motorist from recovering for loss of earnings, diminished earning capacity, permanent injury, and pain and suffering upon subsequent enactment of Federal Tort Claims Act, former section 921 et seq. of Title 28, though Act was retroactive to extent of including time when accident occurred. Jordan v. U. S., C.A.Ga.1948, 170 F.2d 211.

Federal Tort Claims Act, former section 921 et seq. of Title 31, even if it repealed this section whereby United States consented to payment of claims for reasonable medical, hospital, and burial expenses arising out of accident caused by military personnel or civilian employees of War Department, would not have any effect upon a final settlement made under this section prior to its alleged repeal, in absence of specific language to that effect. Id.

The repeal of this section authorizing Secretary of Army to determine, settle and pay any claim for damages not in excess of $1,000 caused by military personnel or civilian employees of Department of Army did not indicate that claim by member of armed forces for service-connected injuries could be prosecuted under section 921 et seq. of Title 28. Jefferson v. U. S., D.C.Mich.1948, 77 F. Supp. 706, affirmed 178 F.2d 518.

3. Claims—Military personnel

This section which authorized Secretary of Army to determine, settle and pay any claim for damages not in excess of $1,000 caused by military personnel or civilian employees of Department of Army indicated general congressional policy not to recognize claims of military personnel for service-connected disabilities otherwise then through general statutory provisions. Jefferson v. U. S., D.C. Mich.1948, 77 F.Supp. 706, affirmed 178 F.2d 518.

§ 223c. Same; appropriations

Such appropriations as may be required for the settlement of claims under the provisions of section 223b of this title are authorized. Appro-

priations available to the Department of the Army for the settlement of claims under the provisions of other laws shall be available for the settlement of claims of the same character under the provisions of section 223b of this title. July 3, 1943, c. 189, § 2, 57 Stat. 373, amended July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Repeals. Act Aug. 2, 1946, c. 753, Title IV, § 424(a), 60 Stat. 846, repealed this section insofar as it concerned claims cognizable under sections 921 and 922 of Title 28 which are caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment, but by section 424(b) of said Act, section 946 of Title 28, this section is specifically saved with reference to any claim which is not caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

§ 223d. Settlement of claims incident to activities of Navy or Navy Department

The Secretary of the Navy and his designees are authorized to exercise with respect to any claim against the United States for damages to or loss or destruction of property, real or personal, or for personal injury or death, caused by military personnel or civilian employees of the Navy Department, or of the Navy while acting within the scope of their employment, or otherwise incident to noncombat activities of the Navy Department or of the Navy, the respective powers conferred upon the Secretary of the Army and his designees by sections 223b and 223c of this title. Dec. 28, 1945, c. 597, § 1, 59 Stat. 662, amended July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Repeal of prior Acts continuing section. Section 6 of Joint Res. July 3 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of said Joint Res. July 3, 1952.

Repeals. Act Aug. 2, 1946, c. 753, Title IV, § 424(a), 60 Stat. 846, repealed this section insofar as it concerned claims cognizable under sections 921 and 922 of Title 28 which are caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment but by section 424 (b) of said Act, section 946 of Title 28, this section is specifically saved with reference to any claim which is not caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

Cross References. Availability of appropriations, see section 222f of this title.

Disposition of abandoned personal property, see section 150e et seq. of Title 5, Executive Departments and Government Officers and Employees.

§ 223e. Same; applicability of section 223b of this title

The provisions of section 223b of this title shall be applicable to section 223d of this title. June 28, 1946, c. 514, § 2, 60 Stat. 333.

Repeals. Act Aug. 2, 1946, c. 753, Title IV, § 424(a), 60 Stat. 846, repealed this section insofar as it concerned claims cognizable under sections 921 and 922 of Title 28 which are caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment but by section 424(b) of said Act, section 946 of Title 28, this section is specifically saved with reference to any claim which is not caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment.

§ 224. Settlement of claims for damages from operation of Army aircraft

Section, Acts June 30, 1922, c. 253, Title I, 42 Stat. 737; Mar. 2, 1923, c. 178, Title I, 42 Stat. 1398; June 7, 1924, c. 291, Title I, 43 Stat. 492; Feb. 12, 1925, c. 225, Title I, 43 Stat. 907; Apr. 15, 1926, c. 146, Title I, 44 Stat. 269; July 2, 1926, c. 721, § 1, 44 Stat. 780; Feb. 23, 1927, c. 167, Title I, 44 Stat. 1120; Mar. 23, 1928, c. 232, Title I, 45 Stat. 339; Feb. 28, 1929, c. 366, Title I, 45 Stat. 1362; May 28, 1930, c. 348, Title I, 46 Stat. 445; Feb. 23, 1931, c. 279, Title I, 46 Stat. 1290; July 14, 1932, c. 482, Title I, 47 Stat. 677; Mar. 4, 1933, c. 281, Title I, 47 Stat. 1583; Apr. 26, 1934, c. 165, Title I, 48 Stat. 627; Apr. 9, 1935, c. 54, Title I, § 1, 49 Stat. 133; May 15, 1936, c. 404, Title I, 49 Stat. 1291; July 1, 1937, c. 423, 50 Stat. 456; June 11, 1938, c. 347, 52 Stat. 655; Apr. 26, 1939, c. 88, 53 Stat. 606; June 13, 1940, c. 343, § 1, 54 Stat. 365; June 30, 1941, 6:20 p. m., E. S. T., c. 262, § 1, 55 Stat. 378; July 2, 1942, c. 477, § 1, 56 Stat. 620; July 1, 1943, c. 185, § 1, 57 Stat. 357, was consolidated in former sections 222a, 222b, and sections 223b, and 223c of this title.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

§ 224a. Settlement of claims for personal injury or death caused by Government officers and employees in foreign countries

When any act of omission of any officer, employee, or agent of the Government of the United States, including all officers, enlisted men, and employees of the Army, Navy, and Marine Corps, results in the personal injury or death of any person, not an American national, in any foreign country in which the United States exercises privileges of extraterritoriality, the Secretary of State may consider, adjust, and determine any claim, arising after February 13, 1936, for the damage occasioned by such injury or death in an amount not in excess of $1,500, United States currency, in any one case, and such amount as may be found to be due to any claimant shall be certified to Congress as a legal claim for payment out of appropriations that may be made by Congress therefor, together with a brief statement of the character of each claim, the amount claimed, and the amount allowed: *Provided*, That this authorization shall not apply to cases of persons in the employ of the United States: *Provided further*, That no claim shall be considered under this section by the Secretary of State unless presented to him within one year from the date of the accrual of said claim: *And provided further*, That acceptance by any claimant of the amount determined under the provisions of this section shall be deemed to be in full settlement of such claim against the Government of the United States. (Feb. 13, 1936, c. 67, 49 Stat. 1138.)

Inapplicable to Army and Department of the Army personnel. Section 7 of Act July 3, 1943, c. 189, 57 Stat. 374, as amended July 26, 1947, c. 343, Title II, § 205 (a), 61 Stat. 501, provided that this section "shall hereafter be inapplicable to acts of officers, enlisted men, and employees of the Army and officers, employees, or agents of the Department of the Army."

§ 224b. Settlement of claims for damages caused by Federal Bureau of Investigation

The Attorney General of the United States may consider, adjust, and determine any claim accruing after January 1, 1934, on account of damages to any person or damages to or loss of privately owned property, caused by the Director, any Assistant Director, inspector, or special agent of the Federal Bureau of Investigation of the Department of Justice acting within the scope of his employment, and such amount as may be found due to any claimant, not exceeding $500 in any one case, shall be certified to Congress as a legal claim for payment out of appropriations that may be made by Congress therefor, together with a brief statement of the character of each claim, the amount claimed, and the amount allowed: *Provided*, That this authorization shall not be construed to apply to cases of persons in the employ or service of the United States while acting within the scope of such employ or service: *Provided further*, That no claim shall be considered under this section unless presented to the Attorney General within one year from the date of the accrual of said claim; except that any claim accruing between January 1, 1934, and March 20, 1936, may be presented within three months after March 20, 1936: *And provided further*, That acceptance by any claimant of the amount determined to be due him under the provisions of this section shall be deemed to be in full and final settlement of such claim against the Government of the United States. Mar. 20, 1936, c. 159, 49 Stat. 1184.

Repeals. Act Aug. 2, 1946, c. 753, Title IV, § 424 (a), 60 Stat. 846, repealed this section insofar as it concerned claims cognizable under sections 921 and 922 of Title 28 which are caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment but by section 424 (b) of said Act, section 946 of Title 28, this section is specifically saved with reference to any claim which is not caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment.

§ 224c. Settlement of claims for damages caused by Post Office Department and services

When any damage is done to person or property by or through the operation of the Post Office Department in any branch of its service and such damage is found by the Postmaster General upon investigation to be a proper charge against the United States, the Postmaster General is invested with power to adjust and settle any claim for such damage when his award for such damage in any case does not exceed $500, and this authority shall hereafter be construed as extending to cases caused by the negligence of any officer or employee of the Post Office Department or Postal Service acting within the scope of his employment. June 16, 1921, c. 23, § 4, 42 Stat. 63, amended June 22, 1934, c. 717, 48 Stat. 1207.

Repeals. Act Aug. 2, 1946, c. 753, Title IV, § 424 (a), 60 Stat. 846, repealed this section insofar as it concerned claims cognizable under sections 921 and 922 of Title 28 which are caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment but by section 424 (b) of said Act, section 946 of Title 28, this section is specifically saved with reference to any claim which is not caused by the negligent or wrongful act or omission of any Government employee acting within the scope of his employment.

§ 224d. Settlement of claims for damages caused by United States armed forces in foreign countries

For the purpose of promoting and maintaining friendly relations by the prompt settlement of meritorious claims, the Secretary of the Army and the Secretary of the Navy, and such other officer or officers as the Secretary of the Army or the Secretary of the Navy, as the case may be, may designate for such purposes and under such regulations as he may prescribe, are hereby authorized to appoint a Claims Commission or Commissions, each composed of one or more officers of the Army, Navy, or Marine Corps, as the case may be, to consider, ascertain, adjust, determine, and make payments, where accepted by the claimant in full satisfaction and in final settlement, of claims, including claims of insured but excluding claims of subrogees, on account of damage to or loss or destruction of public property both real and personal, or on account of damage to or loss or destruction of private property both real and personal or personal injury or death of inhabitants of a foreign country, including places located therein which are under the temporary or permanent jurisdiction of the United States, arising in such foreign country, including claims for damage to or loss or destruction of personal property bailed to the Government and claims for damages incident to the use and occupancy of real property, whether under a lease, express or implied, or otherwise, when such damage, loss, destruction, or injury is caused by Army, Navy, or Marine Corps forces, or individual members thereof, including military personnel and civilian employees thereof, or otherwise incident to noncombat activities of such forces, where the amount of such claim does not exceed $5,000: *Provided,* That no claim shall be considered by such Commissions unless presented within one year after the occurrence of the accident or incident out of which such claim arises except that claims arising out of accidents or incidents occurring after December 6, 1941, but prior to May 1, 1943, may be presented at any time prior to May 1, 1944: *Provided further,* That any such settlements made by such Commissions shall be subject to such regulations as the Secretary of the Army or the Secretary of the Navy may prescribe and may, in cases where the amount exceeds $2,500 but does not exceed $5,000, be subject to the approval of such commanding or other officer of Army, Navy, or Marine Corps forces, as the case may be, as the Secretary of the Army or the Secretary of the Navy may prescribe; and the Secretary of the Army and the Secretary of the Navy, respectively, shall have authority, if he deems any claim in excess of $5,000 to be meritorious, to certify such amount as may be found to be just and reasonable thereon to Congress as a legal claim for payment out of appropriations that may be made by Congress therefor, together with a brief statement of the character of such claim, the amount claimed,

and the amount allowed: *Provided further*, That no claim of any national of any country at war with the United States, or of any ally of such enemy country, except as the Commission or the local military commander shall determine that the claimant is friendly to the United States, and no claim resulting from action by the enemy or resulting directly or indirectly from any act by our armed forces engaged in combat, shall be allowed under sections 224d–224i-1 of this title: *Provided further*, That any such settlements made by such Commissions under the authority of such sections shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary. Jan. 2, 1942, c. 645, § 1, 55 Stat. 880, as amended Apr. 22, 1943, c. 67, § 1, 57 Stat. 66; July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Act April 22, 1943, cited to text, amended section generally.

This section, the Foreign Claims Act, as unaffected by Act July 3, 1943, c. 189, 57 Stat. 373, former sections 222a, 222b, and sections 223a, and 223b of this title, see next to last sentence of section 223b of this title.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

Cross references. Settlement of claims arising from actions of United States armed forces, see sections 218–224a of this title, section 208 of Title 5, Executive Departments and Government Officers and Employees, and section 600 of Title 34, Navy.

1. Subrogation

Where United States paid claim of Englishman for money stolen by American soldier under this authorizing payment of claims on account of loss caused by military forces, United States was not acting as a mere "volunteer" in paying debt and in action by soldier against United States, to recover money taken from him at time of arrest, United States would be subrogated to rights of Englishman and could set off amount so paid. Ford v. U. S., 1950, 88 F.Supp. 263, 115 Ct.Cl. 793.

§ 224e. Same; payments out of certain appropriations

All payments in settlement of claims under section 224d of this title shall be made out of the appropriation, current at the time of settlement, for "Pay, subsistence, and transportation of naval personnel", as to claims settled by Commissions composed of officers of the Navy or Marine Corps, and out of the appropriation, current at the time of settlement, for "Finance Service, Army", as to claims settled by Commissions composed of officers of the Army. Jan. 2, 1942, c. 645, § 2, 55 Stat. 880, as amended Apr. 22, 1943, c. 67, § 2, 57 Stat. 67.

Act April 22, 1943, cited to text, amended section generally.

§ 224f. Same; application to existing law

Sections 224d to 224i-1 of this title shall be supplementary to, and not in lieu of, all other provisions of law authorizing consideration, ascertainment, adjustment, determination, or payment of claims by the Secretary of the Army and the Secretary of the Navy, respectively. Jan. 2, 1942, c. 645, § 3, 55 Stat. 880, as amended Apr. 22, 1943, c. 67, § 3, 57 Stat. 67; July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Act April 22, 1943, cited to text, inserted word "ascertainment."

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

§ 224g. Same; applicable claims

Sections 224d to 224i-1 of this title shall be applicable to claim not heretofore satisfied arising on or after May 27, 1941: *Provided*, That as to any claim in excess of $1,000 such sections shall be applicable for the purpose of payment thereof, or the purpose of the certification thereof to Congress for payment, only if the accident or incident out of which such claim arises has occurred, or shall occur, subsequent to December 6, 1941. Jan. 2, 1942, c. 645, § 4, as added Apr. 22, 1943, c. 67, § 4, 57 Stat. 67.

§ 224h. Same; application to Coast Guard

Claims of the type described in section 224d hereof on account of damage to or loss or destruction of property both real and personal, or personal injury or death of any person, caused by Coast Guard forces, or individual

members, including military personnel and civilian employees thereof, or otherwise incident to activities of such forces, arising at any time while the Coast Guard shall be operating as a part of the Navy may be considered, ascertained, adjusted, determined, and paid in the manner in sections 224d to 224i-1 of this title provided for the settlement of Navy and Marine Corps claims, except that in such cases one or more officers of the Coast Guard may be appointed by the Secretary of the Navy to a Claims Commission or Commissions or as officers to approve settlements of claims made by such Commission or Commissions, and all payments in settlement of such claims shall be made out of the appropriation "General expenses, Coast Guard": *Provided*, That no claims on account of damage to or loss or destruction of property, or personal injury or death, caused by Coast Guard forces, or individual members thereof, or otherwise incident to the activities of such forces, shall be considered, ascertained, adjusted, determined, or paid under the provisions of sections 224d–224i-1 of this title at any time when the Coast Guard shall be operating under the Treasury Department. Jan. 2, 1942, c. 645, § 5, as added Apr. 22, 1943, c. 67, § 6, 57 Stat. 67.

Exception as to transfer of functions. Functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under section 3 of Title 14, Coast Guard, were excepted from the transfer of functions of officers, agencies, and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 224i. Same; settlement of claims by commission

In time of war, any claims, whether Army, Navy, Marine Corps, or Coast Guard, which may be settled under sections 224d to 224i-1 of this title may, at the request of the service concerned, be settled by any Commission or Commissions appointed under sections 224d to 224i-1 of this title even though not composed of officers of the service concerned, subject to reimbursement by the service for whom the claims were settled pursuant to the provisions of sections 224d–224i-1 of this title. Jan. 2, 1942, c. 645, § 7, as added Apr. 22, 1943, c. 67, § 7, 57 Stat. 67.

Exception as to transfer of functions. Functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under section 3 of Title 14, Coast Guard, were excepted from the transfer of functions of officers, agencies, and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Continuation of provisions until August 1, 1953. Section 1(a) (6) of Joint Res. July 3, 1952, c. 570, 66 Stat. 331, as amended by Joint Res. Mar. 31, 1953, c. 13, § 1, 67 Stat. 18 and Joint Res. June 30, 1953, c. 172, 67 Stat. 132, provided that this section should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc.No. 2914, 15 F. R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond August 1, 1953. Section 7 of said Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

Repeal of prior Acts continuing section. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of said Joint Res. July 3, 1952.

§ 224i-1. Same; application to Philippine Islands

Section, act Jan. 2, 1942, c. 645, § 8, as added July 31, 1945, c. 338, 59 Stat. 511, which related to settlement of claims for damages caused by United States armed forces in the Philippine Islands, is now covered by section 1752 of the Appendix to Title 50, War and National Defense.

§ 224j. Settlement of claims for loss or damage resulting from use or occupancy of real estate by Army

Settlement of claims (not exceeding $500 each) for damages to or loss of private property resulting from the use and occupancy of real estate by the Army, that have accrued or may hereafter accrue, shall be made when payment thereof will be accepted by the owners of the property in full satisfaction of such damages, and each claim is substantiated in such

manner as the Secretary of the Army may prescribe by regulations and is approved by the Secretary of the Army, or by such officer or officers as he may designate, whose action thereon shall be conclusive. July 1, 1943, c. 185, § 1, 57 Stat. 359, amended July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

§ 225. Repealed. June 25, 1948, c 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, R.S. § 1089; June 10, 1921, c. 18, § 305, 42 Stat. 24; Feb. 13, 1925, c. 229, § 3, 43 Stat. 939; relating to payment of judgments of Court of Claims, is covered by section 2517 of new Title 28, Judiciary and Judicial Procedure.

½. In general

This section does not extend the right to sue the United States. U. S. v. Turner, C.C.A.N.D.1931, 47 F.2d 86.

7. Appropriations from which claims payable

An officer of the United States cannot pay claims against United States or debts of the United States until an appropriation has been made by Congress for that express purpose. Maryland Cas. Co. v. U. S., C.C.A.Md.1946, 155 F.2d 823.

§ 226. Repealed. June 25, 1948, c. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, Acts Sept. 30, 1890, c. 1126, § 1, 26 Stat. 537; Feb. 13, 1925, c. 229, § 3, 43 Stat. 939, relating to certification of Court of Claims judgments by Secretary of the Treasury, is covered by sections 2516 and 2518 of Title 28, Judiciary and Judicial Procedure.

§ 227. Offsets against judgments against United States

When any final judgment recovered against the United States duly allowed by legal authority shall be presented to the Comptroller General of the United States for payment, and the plaintiff therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Comptroller General of the United States to withhold payment of an amount of such judgment equal to the debt thus due to the United States; and if such plaintiff assents to such set-off, and discharges his judgment or an amount thereof equal to said debt, the Comptroller General of the United States shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff denies his indebtedness to the United States, or refuses to consent to the set-off, then the Comptroller General of the United States shall withhold payment of such further amount of such judgment, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Comptroller General of the United States to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Comptroller General of the United States with 6 per centum interest thereon for the time it has been withheld from the plaintiff. (As amended Mar. 3, 1933, c. 212, Title II, § 13, 47 Stat. 1516.)

Federal Rules of Civil Procedure

Counterclaim and cross-claim, see Rule 13.

½. Construction with other laws

This section providing for allowance of interest on claim against United States, payment of which is withheld by Comptroller General, is not necessarily inconsistent with section 284 of Title 28, providing for computation of interest on judgment for overpayment of tax, but, to the extent that there is any inconsistency, the latter section governs in computing interest on judgment for tax refund. Pugh v. Ladner, D.C.Pa.1943, 52 F.Supp. 604.

The provisions of this section and of section 284 of Title 28 are not in conflict and wherever applicable must be construed as having concurrent effect. Aluminum Company of America v. U. S., 1940, 90 Ct.Cl. 173.

1. Operation and effect in general

It is the general policy of this section that claims against the United States are always to be subject to set-off. Ozanic v. U. S., C.A.N.Y.1951, 188 F.2d 228.

The General Accounting Office has authority to make settlement and adjustment of all accounts for and against the United States and may make a set-off of opposing claims before judgment. U. S.

v. American Sur. Co. of N. Y., C.C.A.Fla. 1946, 158 F.2d 12.

This section is mandatory and is not met by mere determination of Administrator of Veterans' Affairs that veteran obtaining judgment against United States is indebted to the United States. Hines v. U. S. ex rel. Marsh, 1939, 105 F.2d 85, 70 App.D.C. 206.

Purpose of statute is to compensate claimant by way of interest if it be ultimately determined that he was not indebted to government. American Potash Co. v. U. S., 1934, 8 F.Supp. 717, 80 Ct.Cl. 160.

This section does not permit offset against awards made by the Mixed Claims Commission on war claims against Germany. (1929) 35 Op. Atty. Gen. 541.

1½. Effect of amendment

The Amendment of 1933 requiring that "final" judgments only shall draw interest was not retroactive. Whitbeck v. U. S. (1933) 77 Ct. Cl. 309.

Under the amendment of March 3, 1933, the payment of interest is authorized only with respect to the withholding of a final judgment recovered against the United States, and the amendment does not authorize the allowance of interest upon the withholding of a "claim duly allowed by legal authority" and not reduced to judgment, but the amendment was effective only from the date of its enactment, and a claimant, payment of whose duly allowed claim was wrongfully withheld, was entitled to interest for such wrongful withholding during the period prior to the date of the amendment. Id.

1¾. Law governing

G.L.(Ter.Ed.) Mass. c. 231, § 31, was applicable in determining whether federal government was entitled to set off against an amount owed by government on contracts for materials sold, an amount representing processing taxes on raw cotton which had been included in bid price of supplies sold to the government under prior contracts, and had not been paid by the seller as contemplated by those contracts. Suncook Mills v. U. S., D.C.Mass.1942, 44 F.Supp. 744.

2½. Proof of indebtedness

Requirement of this section for suit on denial of indebtedness is not met by administrative findings of indebtedness. Hines v. U. S. ex rel. Marsh, 1939, 105 F.2d 85, 70 App.D.C. 206.

Where corporation which purchased entire stock of second corporation which was owned by plaintiffs agreed that plaintiffs were to have benefit of any recoveries which might be obtained on behalf of second corporation under former section 722 of Title 26 relating to excess profits tax refunds, and renegotiation proceedings between corporation and government resulted in agreement that in event of net refund to corporation under such section, government could set off refund against unpaid balance of renegotiation claim, even if plaintiffs proved a benefit to corporation, they could not recover value of unliquidated claim, in view of fact that plaintiffs could not establish that transaction was at plaintiff's expense. Ward v. Flex-O-Tube Co., D.C.Mich.1953, 112 F.Supp. 658.

6. Debts and claims subject to set-off in general

Judgment of special army court martial imposing a fine against seaman on merchant vessel of United States for violation of section 1565 of Title 10, and seaman's claim for wages were mutual debts which could be set off against each other notwithstanding section 601 of Title 46 protecting seaman's wages against assignment, attachment and arrestment. Shilman v. U. S., D.C.N.Y.1947, 73 F. Supp. 648, affirmed in part and reversed in part on other grounds 164 F.2d 649, certiorari denied 68 S.Ct. 608, 333 U.S. 837, 92 L.Ed. 1122.

6½. —— Wages of seaman

This section, relating to offsets against judgments against the United States, would not permit fine of court-martial sentence to be set off against wages due seaman on merchant vessel of the United States, not only because this section in terms would only apply if fine had been reduced to judgment, but also because section 591 et seq. of Title 46, regarding seamen's wages, would preclude application of the general provisions of this section. Shilman v. U. S., C.C.A.N.Y.1947, 164 F.2d 649, certiorari denied 68 S.Ct. 608, 333 U.S. 837, 92 L.Ed. 1122.

Special army court-martial fine against seaman on merchant vessel of the United States for violation of article of war could not be set off against seaman's claim for wages. Shilman v. U. S. Shipping Administration, C.C.A.N.Y.1947, 164 F.2d 649.

8. —— Set-off against salaries of federal judges

In the suit instituted against the Comptroller General by the plaintiff for an injunction restraining the Comptroller General from withholding the moneys due to plaintiff and from applying said moneys to payment of amounts alleged to be due by the plaintiff to the Interstate Commerce Commission under the order of said Commission, while the decision of the Court of Appeals of the District of Columbia was in effect favorable to the plaintiff, the question whether plaintiff was indebted to the United States, as claimed, was not considered or decided by the court, and no judgment was rendered. Richmond, F. & P. R. Co. v. U. S., 1943, 95 Ct.Cl. 244.

8½. —— Veterans benefits

Where Comptroller General of the United States had three distinct opportunities to reduce claim against veteran to judgment so as to obtain set-off against insurance judgment in favor of veteran but failed to exercise opportunity, the court would not grant another opportunity to have the court determine the question. Hines v. U. S. ex rel. Marsh, 1939, 105 F.2d 85, 70 App.D.C. 206.

Section 443 of title 38 giving Administrator of Veterans' Affairs discretionary power to determine questions regarding insurance benefits due veterans does not authorize set-off by administrator against insurance judgments and does not take them out of operation of this section. Id.

10½. Interest

Exaction of interest from the government requires statutory authority. Rosenman v. U. S., 65 S.Ct. 536, 323 U.S. 658, 89 L.Ed. 535.

The provision for interest applies to offsets made by the General Accounting Office which has succeeded to the functions of the Secretary of the Treasury. U. S. v. La Grange Grocery Co. (D. C. Ga. 1929) 31 F.(2d) 297.

Government withholding overpayment pending determination of claim against taxpayer was liable for interest, regardless of closing agreement. Lloyd-Smith v. U. S., 1930, 44 F.2d 990, 71 Ct.Cl. 74, certiorari denied 51 S.Ct. 485, 283 U.S. 836, 75 L.Ed. 1447.

Manufacturer held entitled to balance of amount due from government for condensed milk furnished under contract with interest until paid, notwithstanding such balance included interest. Highland Milk Condensing Co. v. U. S., 1932, 56 F.2d 682, 74 Ct.Cl. 267.

Interest on illegal tax overpayment withheld by Comptroller General after its allowance by legal authority carried interest. Helvetia Milk Condensing Co., Inc. v. U. S., 1932, 56 F.2d 676, 74 Ct.Cl. 142; Highland Milk Condensing Co. v. U. S., 1932, 56 F.2d 682, 74 Ct.Cl. 267; American Potash Co. v. U. S., 1934, 8 F.Supp. 717, 80 Ct.Cl. 160.

Generally, interest is not to be allowed against the United States except where government has either stipulated to pay interest or where provision for payment of such interest is expressly made by statute. Pugh v. Ladner, D.C.Pa.1943, 52 F.Supp. 604.

Where United States wrongfully withheld from seller payments for merchandise sold to War and Navy Departments to off-set amount due against claimed but nonexistent indebtedness due United States seller held entitled to interest on amounts due at 6 per cent. per annum during time payments were wrongfully withheld. R. J. Reynolds Tobacco Co. v. U. S., 1936, 13 F.Supp. 425, 82 Ct.Cl. 545.

Where the plaintiff sues for the amount of a previous judgment and other legally allowed claims withheld from payment by the Comptroller General, as an offset to a claimed indebtedness of the plaintiff to the United States, and a suit for such indebtedness has been determined against the United States, the plaintiff is entitled to recover interest. Helvetia Milk Condensing Co., Inc., et al., v. U. S., 1933, 77 Ct.Cl. 743, 3 F.Supp. 662.

11. Interest only on balance found due

Taxpayer held not entitled to interest on overpayments of tax withheld by government, where taxpayer was indebted to government for amount exceeding overpayment allowed. Enright v. U. S., 1931, 54 F.2d 182, 73 Ct.Cl. 416, certiorari denied 52 S.Ct. 495, 286 U.S. 543, 76 L.Ed. 1280.

Where railroad's claim for mail service was admitted, but payment was refused on account of government's claim of set off, railroad, on adjudication denying government's claim, was entitled to interest from conclusion of its service; "duly allowed by legal authority." U. S. v. New York C. & St. L. R. Co. (C. C. Ohio, 1929) 32 F.(2d) 887.

Taxpayer's executor, recovering balance of interest accruing on refund of income taxes which had been credited on delinquent taxes for prior year which were barred by limitation, held not entitled to interest on such interest. Castell v. U. S., 1936, 14 F.Supp. 654, 83 Ct.Cl. 222.

Where amounts allowed by legal authority and admittedly due to plaintiff for transportation services rendered by plaintiff to the Government were withheld by the Comptroller General to apply against an alleged indebtedness of the plaintiff to the United States under an order of the Interstate Commerce Commission in connection with a proceeding before the Commission involving the determination of excess income of plaintiff for the calendar years 1922 and 1923 under section 15a, par. 6 of Title 49, and where plaintiff denied any indebtedness to the United States in respect to the said determination of the Commission and did not consent to said off-set by the Comptroller General, and where no judgment was ever rendered with regard to the amount so determined, plaintiff under the facts disclosed by the record, is not entitled to recover any interest under this section. Richmond, F. & P. R. Co. v. U. S., 1943, 95 Ct.Cl. 244.

Under this section it is held that plaintiff is entitled to interest on the amounts of the several items making up its account, where it is shown that the plaintiff was not indebted to the United States at the time payment of the amounts was withheld by the Government. Aluminum Cooking Utensil Co. v. U. S., 1940, 90 Ct.Cl. 187.

11½. Judgment against government

Under this section, any agreement for final judgment against the United States that is to be entered irrespective of set-offs and counterclaims is ineffectual and an agreement for entry of a final judgment in disregard of such cross-claims is invalid. Eastern Transp. Co. v. U. S., C.C.A.N.Y.1947, 159 F.2d 349.

Taxpayer, where overpayments of taxes and interest were duly allowed, held entitled to judgment against United States, in absence of controversy. Helvetia Milk Condensing Co., Inc. v. U. S., 1933, 3 F. Supp. 662, 77 Ct.Cl. 743, certiorari denied 54 S.Ct. 90, 290 U.S. 671, 78 L.Ed. 580. See to the same effect Highland Milk Condensing Co. v. U. S., 1933, 3 F.Supp. 664, 77 Ct.Cl. 745, certiorari denied 54 S. Ct. 90, 290 U.S. 671, 78 L.Ed. 579.

The amendment of section 15a of Title 49 by Act June 16, 1933, which repealed sub-section (6) thereof and directed that all moneys recoverable and payable to the Interstate Commerce Commission thereunder should cease to be so recoverable and payable and that all proceedings pending for the recovery of such moneys should be terminated, was not a judgment against the United States within this section. Richmond, F. & P. R. Co. v. U. S., 1943, 95 Ct.Cl. 244.

13. Processing tax refunds—Set-off

Where price of material sold to United States government included an allowance for processing taxes on raw cotton to be used by the seller, and seller obtained an injunction against collection of the taxes and did not pay them, seller received benefits which in equity and good conscience should be returned to the government, and the government could set off amount of unpaid taxes against amount owed by the government to the seller under other contracts. Suncook Mills v. U. S., D.C.Mass.1942, 44 F. Supp. 744.

14. —— Burden of proof

In action for unpaid contract price of supplies furnished for the Navy Department which was applied by Comptroller General in liquidation of alleged overpayment on prior contracts resulting from plaintiff's failure to pay processing taxes on raw cotton which were included in bid price of supplies sold under the prior contracts, plaintiff had burden of proving payment of the processing taxes on raw cotton used under the prior contracts. Suncook Mills v. U. S., D.C.Mass. 1942, 44 F.Supp. 744.

In action for unpaid contract price of supplies furnished for Navy Department which was applied by Comptroller General in liquidation of alleged overpayment on prior contracts resulting from plaintiff's failure to pay processing taxes on raw cotton which were included in bid price of supplies sold under prior contracts, plaintiff failed to sustain burden of proving payment of processing taxes on raw cotton used under the prior contracts. Id.

15. Unjust enrichment

Where price of material sold to the United States government included allowance for processing taxes on raw cotton to be used by seller, and the seller obtained injunction against collection of the taxes and did not pay them, allowing the government to recover the amount of the taxes would not constitute an "unjust enrichment" of the government. Suncook Mills v. U. S., D.C.Mass. 1942, 44 F.Supp. 744.

§ 228. Repealed. June 25, 1948, c. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, relating to payments of judgments against United States made on settlements by General Accounting Office, is covered by sections 2514 and 2517 of new Title 28, Judiciary and Judicial Procedure.

§ 229. Private claims pending before Congress; taking of testimony

"Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167" should be added to credit.

§ 230. Same; subpœna for taking testimony; compensation of officers and witnesses; return of depositions

"289" in last citation should be "291." No fees to be charged against or collected from the United States, see section 1923 of Title 28, Judiciary and Judicial Procedure.

§ 231. Liability of persons making false claims

Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall forfeit and pay to the United States the sum of $2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit. (R. S. §§ 3490, 5438.)

R. S. § 5438 from Act Mar. 2, 1863, c. 67, §§ 1, 3, 12 Stat. 696, 698.

¼. Construction

This section imposing liability on person making false claim against the United States is a "penal statute" and must be strictly construed, and so far as it perpetuates the nearly obsolete qui tam action, it should be regarded with particular jealousy. U. S. ex rel. Brensilber v. Bausch & Lomb Optical Co., C. C.A.N.Y.1942, 131 F.2d 545, affirmed 64 S. Ct. 187, 320 U.S. 711, 88 L.Ed. 417, rehearing denied 64 S.Ct. 256, 320 U.S. 814, 88 L.Ed. 492.

This section authorizing action by an informer to recover forfeitures and double damages because of presentation of a false claim against United States must be strictly construed, and recovery is permitted only when it is shown that defendants presented a false or fraudulent claim against government of the United States or a department or officer thereof. U. S. ex rel. Ostrager v. New Orleans Chapter, Associated General Contractors of America, C.C.A.La.1942, 127 F. 2d 649, reversed on other grounds, 1943, 63 S.Ct. 393, 317 U.S. 562, 87 L.Ed. 458.

This section imposing liability on person making false claims against the United States, being drastically penal, should be strictly construed, and fraud or deceit is a sine qua non of liability.

Cahill v. Curtiss-Wright Corporation, D. C.Ky.1944, 57 F.Supp. 614.

½. Construction with other laws

Section 3749 of Title 26 providing that no action for recovery of taxes, or of any fine, penalty, or forfeiture shall be commenced unless authorized by Commissioner of Internal Revenue, did not apply to an informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F. Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

⅝. Federal Rules of Civil Procedure

An informer's action under sections 231–234 of this title, although penal in character, is a "civil action" to which the Federal Rules of Civil Procedure, following section 723c of Title 28, apply. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo.1943, 3 F.R.D. 289.

¾. Purpose

The chief purpose of this section and section 232 of this title authorizing informer's action against one presenting fraudulent claim against United States was to provide for restitution of money taken from government by fraud and the device of double damages plus a specified sum was chosen to make sure that government would be made completely whole. U. S. ex rel. Marcus v. Hess, Pa. 1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U. S. 779, 87 L.Ed. 1163.

The purpose of this section is to prohibit the drawing of any money from the treasury of the United States by false or fictitious claims. U. S. ex rel. Rodriguez v. Weekly Publications, D.C.N.Y. 1946, 68 F.Supp. 767.

This section was intended to reach any person knowingly causing or assisting in causing government to pay fraudulent claims, regardless of whether the person had direct contractual relations with government, as well as those receiving money from government as result of their fraud. U. S. v. Samuel Dunkel & Co., D.C.N.Y.1945, 61 F.Supp. 697.

1½. Conformity to section

Informers wishing to recover under this section must adhere to the exact language thereof. U. S. ex rel. Marcus v. Hess, C.C.A.Pa.1942, 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S. Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

1¾. Nature of penalty

In this section providing that persons committing prohibited acts, which include presentation of fraudulent claims against United States, shall "forfeit and pay" $2,000 and double damages, the quoted words do not force conclusion that this section is "criminal" but are consistent with a "civil action" for damages. U. S. ex rel. Marcus v. Hess, Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

The remedy by informer's action against one presenting fraudulent claim against the United States does not lose quality of a "civil action" because more than precise amount of so-called actual damage is recovered. Id.

2. Nature and incidents of penal suit

Diligence in enforcement of this section requires of the Department of Justice the careful and orderly investigation and preparation of the action to be brought in order that government may be able when suit is filed to prosecute it with fairness to defendants charged as well as to the public. U. S. v. Baker-Lockwood Mfg. Co., C.C.A.Mo.1943, 138 F.2d 48.

The gist of an informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work was fraud and deceit. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

2½. Effect of amendment of section 80 of Title 18

Informer statute incorporating statute regarding presentment of false claims against United States incorporated the false claims statute as it stood when the informer statute was adopted, notwithstanding that false claims statute was later amended and that only amended false claims statute appeared in United States Code. U. S. ex rel. Kessler v. Mercur Corporation (C.C.A.N.Y.1936) 83 F. 2d 178, certiorari denied 57 S.Ct. 46, 299 U.S. 576, 81 L.Ed. 424.

Informer statute incorporating statute regarding presentment of false claims against United States incorporated the false claims statute as it stood when the informer statute was adopted and not later amendment to false claims statute. Id.

The amendment of 1918 to section 80 of title 18 did not add to or diminish the scope of this section, which includes acts forbidden by section 80 as it stood when this section was enacted and no other. Olson v. Mellon (D. C. Pa. 1933) 4 F. Supp. 947.

The scope of this section was not affected by subsequent amendments to R. S. § 5438 originally referred to therein. It is to be construed as embracing those acts which were forbidden by that section and no other. U. S. ex rel. Boyd v. McMurtry (D. C. Ky. 1933) 5 F. Supp. 515.

2⅝. Effect on common law

The remedy provided by sections 231–235 of this title did not preclude United States as plaintiff from maintaining common law action to recover in tort for deceit. U. S. v. Silliman, C.C.A.N.J.1948, 167 F.2d 607, certiorari denied 69 S.Ct. 48, 335 U.S. 825, 93 L.Ed. 379.

3. Elements of offense giving rise to forfeiture

Informer's action will lie only in case where defendant presents claim against United States, or in rem against its property. U. S. ex rel. Kessler v. Mercur Corporation (C.C.A.N.Y.1936) 83 F.(2d) 178, certiorari denied 57 S.Ct. 40, 299 U.S. 576, 81 L.Ed. 424; U. S. ex rel. Salzman v. Salant & Salant, D.C.N.Y.1938, 41 F.Supp. 196.

Where seller of butane gas for federal housing projects knowingly submitted claims for gas not delivered and manager of projects knowingly submitted to public housing authority reports including overcharges in items stating cost of gas, conduct of seller and manager in connection with each of mine reports submitted to the authority constituted a separate violation of this section prohibiting presentation of false claims and conspiracy to defraud United States in payment of false claims. U. S. v. Gardner, D.C.Ala.1947, 73 F.Supp. 644.

An informer's action under sections 231-235 of this title must rest on violations of sections 80, 82-86 of Title 18 as they read at time of enactment of this section. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

An informer's action under section 232 of this title for forfeiture and damages for making false claims against the government or department or officer thereof may be maintained where defendant has violated sections 80, 82-86 of Title 18, as they read when adopted by reference into this section. U. S. ex rel. Salzman v. Salant & Salant, D.C.N.Y.1938, 41 F. Supp. 196.

3¼. Intent

Criminal intent, or in a civil case, intent to defraud, is a necessary prerequisite to criminal or civil liability under this section. U. S. v. Park Motors, D.C. Tenn.1952, 107 F.Supp. 168.

3½. Conspiracy

Where seller of butane gas for federal housing projects knowingly submitted claims for gas not delivered and manager of projects knowingly submitted to public housing authority reports including overcharges in items stating cost of gas, seller and manager thereby conspired to defraud the United States within this section. U. S. v. Gardner, D.C.Ala.1947, 73 F.Supp. 644.

4. Persons liable to penalty

This section applies to any person not in the military or naval forces. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F. Supp. 197, reversed on other grounds, 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

The word "person", as used in this section, includes corporations. Id.

Informer's action will lie only in case where defendant has made false, fictitious, or fraudulent claim for money or property against federal government based on government's own liability to defendant. U. S. ex rel. Kessler v. Mercur Corporation (D.C.N.Y.1935) 13 F.Supp. 742, affirmed 83 F.2d 178, certiorari denied 57 S.Ct. 40, 299 U.S. 576, 81 L.Ed. 424.

Private citizen, in his own behalf and in behalf of United States, held not authorized to maintain suit against government officials charged with enforcement of revenue laws to recover penalties for alleged connivance and scheming with taxpayer to circumvent revenue laws and relieve taxpayer from payment of taxes. U. S. ex rel. Boyd v. McMurtry (D. C. Ky. 1933) 5 F. Supp. 515.

5. What constitutes false claim or account

Where, during a national emergency, a contract was entered into between government and munitions manufacturer on cost plus fixed fee basis under which manufacturer was to make small arms ammunition under government inspection and supervision, and with government funds and government material, provisions in the contract exempting the manufacturer from liability for any but wrongful acts of corporate directors and certain of its supervisory employees was not void and ineffective as being against public policy and good morals. U. S. v. U. S. Cartridge Co., C.A.Mo.1952, 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. —.

Where contract allowed contractor a greater rental for equipment rented from third parties than it allowed for use of his own equipment in completion of a government project, suppression of truth by contractor that third party who had technical ownership of certain equipment would enjoy a substantial profit without actual risk or effort on his part because contractor and his representatives had negotiated and financed the purchase of equipment in name of third party was itself a fraud on government. U. S. v. Grannis, C.A.N.C.1949, 172 F.2d 507.

Where government official told union official quantity of hats needed and maximum price government would pay and union official procured hat manufacturers to allocate among themselves the desired quantity and to submit bids for respective shares at such maximum price, action could not be maintained for damages, penalties or forfeiture on ground that union official and manufacturers were guilty of conspiracy to secure payment of a false claim. U. S. ex rel. Weinstein v. Bressler, C.C.A.N.Y.1947, 160 F.2d 403.

Under this section imposing liability on person making false claim against the United States, even though it would be enough that a claimant secured his contract with United States by deceit, it would not be sufficient that he secured it by any other kind of wrong. U. S. ex rel. Brensilber v. Bausch & Lomb Optical Co., C.C.A.N.Y.1942, 131 F.2d 545, affirmed 64 S.Ct. 187, 320 U.S. 711, 88 L.Ed. 417, rehearing denied 64 S.Ct. 256, 320 U.S. 814, 88 L.Ed. 492.

This section imposing liability on person making false claims against the United States makes "fraud" of some sort the basis of the liability, and uses the word in its accepted sense of deceit. Id.

Even if contracts between defendants and another unlawfully gave defendants a monopolistic advantage without which they would not have secured their contracts with the United States, where defendants did not represent that they had not secured an unlawful monopoly of the market, there was no "fraud" within this section imposing liability on person making false claims against the United States, and therefore action to recover penalty was properly dismissed. Id.

United States had no property right in profits arising out of trespasser's use of Army base, and hence trespasser's false account of revenues and expenses filed with United States was not "false claim" on which statutory informer's action could be based. U. S. ex rel. Kessler v. Mercur Corporation (C.C.A.N.Y.1936) 83 F.2d 178, certiorari denied 57 S.Ct. 40, 299 U.S. 576, 81 L.Ed. 424.

Agreement by which defendant was to use Army supply base and was to pay percentage of net receipts for repair and improvement of base under supervision of Quartermaster General did not give United States property interest in moneys derived by defendant from its operation of base, and hence defendant's false account of revenues and expenses was not "false claim" against United States on which statutory informer's action could be based. Id.

In war fraud action by Federal Government against munitions manufacturer, evidence failed to support plaintiff's claim of defendant's violation of war contract by failure to maintain a satisfactory system of inspection of munitions manufactured under the contract, or that such failure constituted fraud leading to a false claim. U. S. v. U. S. Cartridge Co., D.C.Mo.1950, 95 F.Supp. 384, affirmed 198 F.2d 456, certiorari denied 73 S.Ct. 645.

If knowledge of munitions manufacturer's employees involved in acts depriving Ordnance Department of inspection of ammunition could be imputed to manufacturer and those who presented

presenting false claims against United States for work, the damage to be recovered was the money which the government contributed to each project in excess of what it would have paid, had there been fair and open competition in bidding. U. S. ex rel. Marcus v. Hess, D. C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

As regards proof of damages in informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work, the fact that grant of government funds for use on projects placed a limit on government's share of cost of projects did not prevent determination of what loss, if any, the government suffered by fraudulent bidding without first showing total cost of entire projects. Id.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work, rejecting defendants' offer to prove actual cost to defendants of doing work called for by contracts on projects was not error, since actual cost to defendants of doing work was immaterial. Id.

17. Questions for jury

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work upon public work projects and defendants' acts in presenting false claims against United States for such work, whether any damage was suffered by United States on projects as result of defendants' acts was for jury. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work, the connection of individual defendants, who were officers of certain companies, with conspiracy was for jury. Id.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work, whether bids submitted by defendants were reasonable was for jury under the evidence. Id.

18. Amount of recovery

Under this section providing that one committing prohibited acts, which include presentation of fraudulent claims against United States, shall forfeit and pay $2,000 and double damages for "any" of the acts, lump sum in damages, including $2,000 forfeit, should be assessed for each separate P.W.A. project in connection with which defendants conspired to rig bidding, since incidence of the fraud on each additional project was clearly individualized. U. S. ex rel. Marcus v. Hess, Pa.1943, 63 S.Ct. 379, 87 L.Ed. 443, rehearing denied 756, 318 U.S. 799, 87 L.Ed. 1163.

In action by the United States, based upon false claims, the United States was entitled to recover a forfeiture of $2,000 for each false claim made and in addition double the amount of damages sustained by reason of such false claims. U. S. v. Grannis, C.A.N.C.1949, 172 F.2d 507.

Where contractor presented to government ten vouchers covering fictitious claims for the rental of 130 automobiles and trucks, to which vouchers were attached schedules for each of the automobiles and trucks, which schedules contained false statements as to ownership and valuation of vehicles, government was entitled to recover a forfeiture of $2,000 for each of the ten vouchers, but was not entitled to recover in addition such forfeiture for each of the schedules for the 130 automobiles and trucks. Id.

In government's action to recover statutory forfeitures for submitting false claims for materials supplied on a Navy shipbuilding project by subcontractor who submitted false bids in connection with 90 purchase orders under 16 subcontracts, government could recover statutory forfeiture of $2,000 on each of the 16 subcontracts, but not on each of the 90 purchase orders, where the fraud was with respect to the contracts, and the purchase orders were merely part of such contracts. U. S. v. Rohleder, C.C.A.Pa. 1946, 157 F.2d 126.

In action for statutory forfeitures and double damages for allegedly making false claims against government for meat products sold, forfeitures could properly be assessed in each individual count if government properly proved that defendants had violated any or all of three classes of infractions set forth in complaint. U. S. v. American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223.

In determining damage in action for statutory forfeitures and double damages for allegedly making false claims against government for meat products sold, sum total of all improper material furnished in fulfilling contracts could be used in measuring amount of government's loss rather than individual losses suffered by government in each contract. Id.

Where seller of butane gas for federal housing projects knowingly submitted claims for gas not delivered and manager of projects submitted to public housing authority nine quarterly reports including overcharges in items stating cost of gas, United States was entitled to recover penalty under this section for each of nine violations of this section in addition to double amount of damages sustained. U. S. v. Gardner, D.C.Ala.1947, 73 F.Supp. 1947.

18½. Alternative remedies

United States should be permitted to elect whether to proceed first with civil action under this section or with criminal prosecution based on same transaction in absence of showing of prejudice to defendants in respective actions or of a want of diligence on the part of United States in prosecution of the suit with which it elects to proceed. U. S. v. Baker-Lockwood Mfg. Co., C.C.A.Mo.1943, 138 F.2d 48.

If contracts entered into by federal government for purchase of rubber tires were induced by fraud consisting of bidders submitting collusive bids, government, on discovery of the fraud, would have choice of either rescinding the contracts, restore what had been received,

and recover what had been paid, or of enforcing the contracts and recovering damages resulting from the fraud, but the government could not have both remedies. Mandel v. Cooper Corporation, D.C.N.Y. 1941, 42 F.Supp. 317.

19. Burden of proof

In action for statutory forfeitures and double damages for allegedly making false claims against government for meat products sold, although defendants had pleaded guilty in prior criminal action to conspiring to defraud the government by presenting such claims, government had burden of proving that specific transactions affecting such contracts were fruitful result of such combination. U. S. v. American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223.

In action by United States for alleged violations of this section in connection with sale of automobile to disabled veterans and claim for reimbursement from Veterans Administration made pursuant to Act Aug. 8, 1946, c. 870, 60 Stat. 915, providing for gift of an automobile by federal government to disabled veterans of World War II who lost one or both legs, with cost not to exceed $1,600, Government had burden to show by preponderance of proof that defendant intended to and did present a false claim to government to be paid by government, and to show that defendant intended that result of presenting false claim was to get something out of Government to which defendant knew he was not entitled. U. S. v. Park Motors, D.C.Tenn., 1952, 107 F.Supp. 168.

In action by United States to recover forfeitures and double damages for false claims in connection with furnishing butane gas to federal housing projects, the plaintiff had burden of proving allegations of complaint by a preponderance of evidence. U. S. v. Gardner, D.C. Ala.1947, 73 F.Supp. 644.

The rules respecting burden of proof in criminal cases were not applicable in an informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for such work. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

20. Defenses

In government's action against defendant to recover forfeitures for submitting false claims for materials supplied by defendant as subcontractor on a Navy shipbuilding project, defendant could not escape liability on ground that he had no knowledge that the bids being submitted for Navy approval were not bona fide, where such bids were procured by defendant's agents for defendant's sole benefit. U. S. v. Rohleder, C.C.A. Pa.1946, 157 F.2d 126.

Contractor, dealing with government contracting officer, both during execution of prime war contract and during and at time of signing supplemental contract covering settlement of claims arising under termination of prime contract, was chargeable with notice of extent of authority of contracting officer and, hence, could not rely upon settlement as also settling claims of government against contractor for war fraud arising out of prime contract, such settlement being beyond authority of contracting officer. U. S. v. U. S. Cartridge Co., D.C.Mo.1948, 78 F.Supp. 81.

In war fraud action against munitions manufacturer, supplementary contract forming basis of settlement of defendant's claims against government arising out of termination of prime contract could not be relied upon as a defense, where it specifically exempted settlement of liability concerning defects in, and guarantees or warranties relating to, any completed articles or component parts furnished to government by defendant. Id.

In informer suit, plea that United States, with full knowledge of filing of the suit and of matters involved therein, entered into settlement of defendants' claims under contract, by attached instrument which recited settlement of specified claims under contract, was insufficient to allege a settlement and would be stricken out. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo.1946, 68 F.Supp. 902.

An informer's action to recover penalty under this section, and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work was a "civil action" under statute to recover civil sanctions for acts committed in violation of sections 80, 82–86 of Title 18, and such action was not barred by previous criminal proceedings against defendants, respecting a conspiracy in regard to bidding. U. S. ex rel. Marcus v. Hess, D.C. Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L. Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

Where indictment in criminal proceedings against defendants for conspiracy with respect to bidding on electrical work on public work projects made no reference to presentation of false claims against United States for work on projects, defendants could not plead "double jeopardy" as defense to a subsequent informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of conspiracy by defendants in bidding and presenting false claims against United States for work. Id.

21. Trial proceedings

Where the United States proceeded with due diligence to institute action under sections 231 and 232 of this title, it was entitled to precedence in the trial of such action over an informer's action against the same defendants and based on same cause of action, though informer's action was filed two days earlier. U. S. v. Baker-Lockwood Mfg. Co., C.C.A.Mo.1943, 138 F.2d 48.

A motion to stay proceedings in civil action to recover penalties and damages for presenting false claim against the United States pending trial of criminal prosecution based on same transaction is ordinarily addressed to discretion of district court. Id.

In informer's action respecting a conspiracy by defendants and defendants' acts in presenting false claims against United States, refusal of defendants' motion to withdraw a juror because of remarks of plaintiff's counsel concerning a plea of nolo contendere entered by defendants in previous criminal proceedings respecting conspiracy was proper where defendants' counsel, in their opening to jury, mentioned that defendants had pleaded nolo contendere in criminal proceedings and, in final argument, urged that no admission of liability was to be implied from the fact that defendants had pleaded nolo contendere in

presenting false claims against United States for work, the damage to be recovered was the money which the government contributed to each project in excess of what it would have paid, had there been fair and open competition in bidding. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

As regards proof of damages in informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work, the fact that grant of government funds for use on projects placed a limit on government's share of cost of projects did not prevent determination of what loss, if any, the government suffered by fraudulent bidding without first showing total cost of entire projects. Id.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work, rejecting defendants' offer to prove actual cost to defendants of doing work called for by contracts on projects was not error, since actual cost to defendants of doing work was immaterial. Id.

17. Questions for jury

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work upon public work projects and defendants' acts in presenting false claims against United States for such work, whether any damage was suffered by United States on projects as result of defendants' acts was for jury. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work, the connection of individual defendants, who were officers of certain companies, with conspiracy was for jury. Id.

In informer's action to recover penalty under this section and double the amount

fraud on each
clearly individual
cus v. Hess, Pa.19
443, rehearing de
87 L.Ed. 1163.

In action by t
upon false claims
entitled to recove
for each false cl
tion double the a
tained by reason
U. S. v. Grannis
507.

Where contract
ment ten vouch
claims for the re
and trucks, to w
tached schedules
biles and trucks
tained false stat
and valuation o
was entitled to
$2,000 for each o
was not entitled
such forfeiture fo
for the 130 auto
In government'
utory forfeitures
claims for materi
shipbuilding pro
who submitted f
with 90 purchase
contracts, governm
utory forfeiture
16 subcontracts.
90 purchase order
with respect to
purchase orders
contracts. U. S.
1946, 157 F.2d 126
In action for s
double damages
false claims agai
products sold, fo
be assessed in e
government prope
ants had violate
classes of infract
plaint. U. S. v.
D.C.N.J.1953, 113
In determining
statutory forfeit
ages for alleged
against governm
sold, sum total
furnished in fulfi
used in measuri
ment's loss rathe
suffered by gover
Id.

Where seller o
housing projects
claims for gas no
of projects subm
authority nine q
ing overcharges
gas. United Stat
cover penalty un
of nine violations
tion to double a
tained. U. S. v.
73 F.Supp. 1947.

and recover what had been paid, or of enforcing the contracts and recovering damages resulting from the fraud, but the government could not have both remedies. Mandel v. Cooper Corporation, D.C.N.Y. 1941, 42 F.Supp. 317.

19. Burden of proof

In action for statutory forfeitures and double damages for allegedly making false claims against government for meat products sold, although defendants had pleaded guilty in prior criminal action to conspiring to defraud the government by presenting such claims, government had burden of proving that specific transactions affecting such contracts were fruitful result of such combination. U. S. v. American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223.

In action by United States for alleged violations of this section in connection with sale of automobile to disabled veterans and claim for reimbursement from Veterans Administration made pursuant to Act Aug. 8, 1946, c. 870, 60 Stat. 915, providing for gift of an automobile by federal government to disabled veterans of World War II who lost one or both legs, with cost not to exceed $1,600, Government had burden to show by preponderance of proof that defendant intended to and did present a false claim to government to be paid by government, and to show that defendant intended that result of presenting false claim was to get something out of Government to which defendant knew he was not entitled. U. S. v. Park Motors, D.C.Tenn., 1952, 107 F.Supp. 168.

In action by United States to recover forfeitures and double damages for false claims in connection with furnishing butane gas to federal housing projects, the plaintiff had burden of proving allegations of complaint by a preponderance of evidence. U. S. v. Gardner, D.C. Ala.1947, 73 F.Supp. 644.

The rules respecting burden of proof in criminal cases were not applicable in an informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for such work. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

20. Defenses

In government's action against defendant to recover forfeitures for submitting false claims for materials supplied by defendant as subcontractor on a Navy shipbuilding project, defendant could not escape liability on ground that he had no knowledge that the bids being submitted for Navy approval were not

In war fraud actio
manufacturer, supp
forming basis of se
ant's claims against
out of termination
could not be relied
where it specifically
of liability concern
guarantees or warra
completed articles
furnished to govern
Id.

In informer suit
States, with full kn
the suit and of mat
entered into settle
claims under contr
strument which recit
cified claims under
cient to allege a sett
stricken out. U. S.
Louis Clay Produc
68 F.Supp. 902.

An informer's act
alty under this sect
amount of damages
States as result of
fendants in bidding
on public work pro
acts in presenting
United States for w
tion" under statut
sanctions for acts co
of sections 80, 82–86
action was not barr
inal proceedings ag
specting a conspirac
ding. U. S. ex rel.
Pa.1941, 41 F.Supp. 1
grounds 127 F.2d 23
grounds 63 S.Ct. 379
Ed. 443, rehearing
318 U.S. 799, 87 L.Ed

Where indictment
ings against defend
with respect to b
work on public wo
reference to present
against United State
ects, defendants co
ble jeopardy" as def
informer's action to
der this section and
of damages sustaine
as result of conspir
bidding and prese
against United State

21. Trial proceeding

Where the Unite
with due diligence t
der sections 231 and
was entitled to prec
such action over
against the same d
on same cause of
former's action was
lier. U. S. v. Baker
C.C.A.Mo.1943, 138 F

A motion to stay
action to recover pe
for presenting fals
United States pendi

criminal action. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

22. Exoneration of part of defendants

In a qui tam action brought pursuant to sections 231–235 of this title, thereby serving a federal purpose, the federal rule as to release of joint tortfeasors applies, so that the release of those defendants who contributed to payment of a portion of judgment against them did not release noncontributing defendants. U. S. ex rel. Marcus v. Hess, C.C.A.Pa.1946, 154 F.2d 291.

Release of defendants contributing to payment of portion of judgment against them and other defendants from further liability thereon, with reservation of plaintiff's rights as to noncontributing defendants, does not release or discharge noncontributing defendants from liability for remainder of judgment. Id.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants and defendants' acts in presenting false claims against United States, where defendants' liability was joint and several, and codefendant was a mere employee of defendant association, a verdict for codefendant did not bar recovery against other defendants who employed codefendant to carry out unlawful acts to plaintiff's damage. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

Where defendants entered into a conspiracy regarding bidding on electrical work on public work projects and presented false claims against United States for work on such projects, the fact that codefendant held a commission as a reserve officer in United States military service did not relieve codefendant from liability for violation of this section, especially where there was no evidence that codefendant was on active duty in military service at time of commission of defendants' acts. Id.

If, in informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of defendants' acts in presenting false claims against United States, there was a misjoinder of parties defendant in that all parties-defendant were charged to have participated in a joint conspiracy, and there was not sufficient proof to bind some defendants, the entire action would not be defeated but recovery would be prevented only against defendants as to whom there was insufficient proof. Id.

23. Right of United States to recover

Where defendants entered into a conspiracy regarding bidding on electrical work on public work projects and presented false claims against United States for work on such projects, the United States could recover penalty under this section from defendants, regardless of whether United States was damaged by defendants' acts. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

24. Pleading

Where, in a former suit by school for tuition and other fees of a certain group of veterans, the United States counterclaimed for alleged overcharges, including overcharges to another group of veterans for which the school did not then seek tuition, the United States, in a later suit brought by the school to recover fees for latter group of veterans, could not counterclaim for the same alleged overcharges to the latter group, even though no proof on the counterclaim had been introduced in the former suit. Southwestern College of Indus. Arts v. U. S., 1952, 105 F.Supp. 835, 123 Ct.Cl. 172.

Complaints under sections 231–233 of this title for frauds in selling dried eggs to Federal Surplus Commodities Corporation were not subject to dismissal as failing to show that defendants made to a person or officer in government's service a claim upon or against government or department or officer thereof. U. S. v. Samuel Dunkel & Co., D.C.N.Y.1945, 61 F.Supp. 697.

In informer's action under this section and section 232 of this title, general allegations of fraud were conclusions, and court was required to look to specific facts alleged to determine whether fraud was actually charged. Cahill v. Curtiss-Wright Corporation, D.C.Ky.1944, 57 F. Supp. 614.

In informer's action, complaint alleging that company which had contracted to manufacture airplanes for the United States was guilty of deliberate or negligent extravagance and waste in maintaining large numbers of useless employees upon the payroll and which failed to charge that any false claim was presented to any officer of the government, failed to state a cause of action under this section and section 232 of this title. Id.

A complaint covering three-year period but only alleging one false claim against the United States, alleging presentation of claim to "the Government," that credit was not given the government for salvage materials under contract to repair vessels for military service, and that accounts and bills were false and submitted to defraud the government, although lacking in particularity, was not dismissible, but bill of particulars would be required. U. S. ex rel. Schiff v. Atlantic Basin Iron Works, D.C.N.Y.1944, 53 F. Supp. 268.

In informer's action under section 232 of this title, for making false claims against the government or a department or officer thereof, allegations that Red Cross was an arm or department of the government, and that defendant in presenting statements and vouchers to Red Cross presented them to a department of the government, were "conclusions of law" unwarranted by statutes and not admitted on demurrer or motion to dismiss the complaint for insufficiency. U. S. ex rel. Salzman v. Salant & Salant, D.C.N.Y.1938, 41 F.Supp. 196.

In suit for conspiracy and fraud, such as suit under sections 231–234 of this title it is necessary that there be greater detail in the allegations of facts than in many other suits. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo. 1943, 3 F.R.D. 289.

In informer's action under sections 231–234 of this title, complaint alleging that lower bids were made on title to be furnished in construction of government arms plant than bid of successful bidder should be more specific in stating upon what title such lower prices were bid. Id.

In informer's action under sections 231–234 of this title, complaint alleging that defendant contractors asked for bids on certain type of tile for use in construc-

tion of a government small arms plant, knowing that major portion to be used would be of another type, should be made more specific in stating how the government was thereby defrauded. Id.

In informer's action under sections 231-234 of this title, complaint alleging that government was defrauded in connection with construction of small arms plant should be specific in stating that bid of successful bidder on material furnished was higher than the bid of unsuccessful bidder, if such is the claim. Id.

A complaint in informer's action under sections 231-234 of this title alleging that government was defrauded by defendants in obtaining the payment of claims of exorbitant amounts for certain of materials used should be made more specific, even though defendants were in possession of records involved, since defendants should be advised as to which of the books and papers concerned the fraud alleged. Id.

In informer's action under sections 231-234 of this title, complaint alleging that government was defrauded under contract for construction of small arms plant, in that lowest bidder on tile to be used was not successful bidder, was defective in failing to state that lowest bidder was ready and able to make delivery in accordance with its bid. Id.

In informer's action under sections 231-234 of this title, complaint alleging that the government was defrauded by corporate defendants should be made more specific in stating the representatives of the corporate defendants which took part in the alleged unlawful enterprise. Id.

24½. Motion to strike

In informer's action under sections 231-234 of this title alleging that the government was defrauded by defendant in connection with the furnishing of certain materials for construction of small arms plant, allegations referring to the contracting fee for the plant as a whole would not be stricken, but would be allowed to remain subject to determination as to admissibility in evidence. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo.1943, 3 F.R.D. 289.

25. Instructions

In action by United States for double damages and forfeiture arising out of alleged false claims against the United States, evidence would have justified an instruction that failure to testify by business men charged with defrauding government at a time of national emergency, where facts were peculiarly within their knowledge, might fairly give rise to inference that defendants believed that if they appeared upon stand and subjected themselves to cross-examination their testimony would be damaging to their case. U. S. v. Grannis, C.A.N.C. 1949, 172 F.2d 507.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for such work, refusal of defendants' point for charge that, where United States government had since February 5, 1940, paid any sponsor an amount in excess of amount of percentage of alleged damages to which the government would be entitled, there could be no recovery on that project, was not error. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F. Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S. Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for such work, refusal of defendants' point for charge that there could be no recovery of any penalty or forfeiture on account of any project in which no actual damages had been shown was proper. Id.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for such work, refusal of defendants' point for charge that there could be no recovery of damages because of payments made upon periodic estimates for partial and final payment, known as certain forms, which were submitted by contractors after a designated date, was not error. Id.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for such work, refusal of defendants' point for charge that, if maximum limit of federal government's agreed contribution on any project would have been reached without alleged excessive amount of electrical contract, there could be no recovery of any damages on account of projects, was not error. Id.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for such work, failure to affirm defendants' point for charge that, if jury found that any one or more of defendants did not participate in any unlawful act, the jury should find in favor of such defendants, even though verdict was against other defendants, was not ground for new trial in view of language in general charge. Id.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work, instructions regarding computation of damages were proper with respect to measurement thereof. Id.

In informer's action to recover penalty under this section and double the amount of damages sustained by United States as result of an alleged conspiracy by defendants, an instruction that if jury found that a conspiracy existed jury would have to determine which defendants were parties to conspiracy, and that if none were involved in conspiracy jury should return verdict for defendants, but that if jury found that a conspiracy existed jury should return verdict for plaintiffs against defendants involved in conspiracy, was proper. Id.

27. Relief funds

Federal funds distributed in aid to states are as much in need of protection from fraudulent claims as any other federal money, and this section penalizing presentation of fraudulent claims does not make extent of their safeguard de-

pendent upon bookkeeping devices used for their distribution. U. S. ex rel. Marcus v. Hess, Pa.1943, 63 S.Ct. 379, 317 U. S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

28. Previous criminal prosecution

A private person could maintain informer's action against persons submitting fraudulent and collusive bids on hospital constructed with P.W.A. assistance, though they had previously been indicted for presenting fraudulent claims and had paid fines. U. S. ex rel. Ostrager v. New Orleans Chapter, Associated General Contractors of America, La.1943, 63 S.Ct. 393, 317 U.S. 562, 87 L. Ed. 458.

The defense of double jeopardy is not applicable in civil actions under this section. U. S. v. Grannis, C.A.N.C.1949, 172 F.2d 507.

Where defendants were acquitted of criminal charges based on certain transactions, such judgment was not res judicata of a subsequent civil action under this section based on the same transactions. U. S. v. MacEvoy, D.C.N.J.1950, 10 F.R.D. 323.

Where defendants were acquitted of criminal charges based on certain transactions, subsequent civil action under this section based on same transactions did not expose defendants to double jeopardy. Id.

29. Rules of Civil Procedure

An informer's action against one presenting fraudulent claim against United States was a "civil action" insofar as double damages and $2,000 "forfeit and pay" allegation were concerned, and hence defendants could not be excused from complying with motion for leave to take testimony from them pursuant to Federal Rules upon ground of "double jeopardy". United States ex rel. Bayarsky v. Brooks, D.C.N.J.1943, 51 F.Supp. 974.

Rule 81(a) (2), following section 723c of Title 28, providing that Rules of Civil Procedure should not apply where a forfeiture of property under a federal statute was involved, except to extent that practice in such proceeding was not set forth in federal statutes, does not restrict full force of Rule 26, authorizing depositions to be taken pending action in an informer's action, since no "forfeiture" of any specific property or money is contemplated. Id.

A motion for an "order compelling the production of the books and papers of the defendants, namely the following", then followed only by a list of names of defendants, was denied because of an insufficient designation. Id.

30. Similar action by government

Where action by United States for alleged fraudulent practices in presentation of claims for airplane engines manufactured for the United States was still pending, an identical action by a private person except for additional allegation that during period subsequent to filing of government's action, defendants had knowingly used defective materials in airplane engines manufactured for the United States, was properly dismissed since the two petitions were in substance the same. Hillgrove v. Wright Aeronautical Corp., C.C.A.Ohio 1945, 146 F.2d 621.

The government having first commenced an action under this section and section 232 of this title, another action at instance of informer will not lie if actions are identical. U. S. ex rel. Benjamin v. Hendrick, D.C.N.Y.1943, 52 F. Supp. 60.

Where only difference between complaint of the United States under this section and section 232 of this title, and complaint by alleged informer was that informer spoke of projects not only in named counties but throughout the United States and that informer demanded a larger sum of money, the actions were identical and informer's action was not maintainable. Id.

31. Summary judgment

In action for statutory forfeitures and double damages for allegedly making false claims against government for meat products sold, although defendants, in prior criminal action, had pleaded guilty to conspiracy to defraud government by presenting such claims, government was not entitled to summary judgment on issue of liability. U. S. v. American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223.

Where government had no cause of action under this section, defendants were entitled to summary judgment. U. S. ex rel. Weinstein v. Bressler, D.C. N.Y.1945, 60 F.Supp. 676, affirmed 160 F. 2d 403.

32. Cure of error

In action for forfeiture and double damages under this section, error in permitting that part of defendants' answer which set out special defense that action was barred because defendants had previously been acquitted on a charge of conspiracy to defraud United States was not cured by statement in charge to jury that special defense was not evidence and that jury was obliged to reach its verdict entirely upon the evidence. U. S. v. Grannis, C.A.N.C.1949, 172 F.2d 507.

33. Veterans administration claims

Where claim presented to Veterans Administration incorrectly stated that total purchase price of automobile by veteran from dealer did not exceed $1,600, but government was not overcharged for automobile and dealer received nothing he was not entitled to, and dealer did not with fraudulent design undertake to deceive and cheat government, dealer could retain amount of claim paid under Act Aug. 8, 1946, c. 870, 60 Stat. 915, providing for gift of automobile by federal government at cost of $1,600 to disabled veterans of World War II who lost one or both legs, notwithstanding falsity of claim. U. S. v. Park Motors, D.C.Tenn. 1952, 107 F.Supp. 168.

§ 232. Same; suits; procedure

(A) The several district courts of the United States, the District Court of the United States for the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit.

(B) Except as hereinafter provided, such suit may be brought and carried on by any person, as well for himself as for the United States, the same shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or dis-

continued without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent.

(C) Whenever any such suit shall be brought by any person under clause (B) notice of the pendency of such suit shall be given to the United States by serving upon the United States attorney for the district in which such suit shall have been brought a copy of the bill of complaint and by sending, by registered mail, to the Attorney General of the United States at Washington, District of Columbia, a copy of such bill together with a disclosure in writing of substantially all evidence and information in his possession material to the effective prosecution of such suit. The United States shall have sixty days, after service as above provided, within which to enter appearance in such suit. If the United States shall fail, or decline in writing to the court, during said period of sixty days to enter any such suit, such person may carry on such suit. If the United States within said period shall enter appearance in such suit the same shall be carried on solely by the United States. In carrying on such suit the United States shall not be bound by any action taken by the person who brought it, and may proceed in all respects as if it were instituting the suit: *Provided*, That if the United States shall fail to carry on such suit with due diligence within a period of six months from the date of its appearance therein, or within such additional time as the court after notice may allow, such suit may be carried on by the person bringing the same in accordance with clause (B) above. The court shall have no jurisdiction to proceed with any such suit brought under clause (B) or pending suit brought under this section whenever it shall be made to appear that such suit was based upon evidence or information in the possession of the United States, or any agency, officer or employee thereof, at the time such suit was brought: *Provided, however*, That no abatement shall be had as to a suit pending on December 23, 1943, if before such suit was filed such person had in his possession and voluntarily disclosed to the Attorney General substantial evidence and information which was not theretofore in the possession of the Department of Justice.

(D) In any suit whether or not on appeal pending on December 23, 1943, brought under this section, the court in which such suit is pending shall stay all further proceedings, and shall forthwith cause written notice, by registered mail, to be given the Attorney General that such suit is pending, and the Attorney General shall have sixty days from the date of such notice to appear and carry on such suit in accordance with clause (C).

(E) (1) In any such suit, if carried on by the United States as herein provided, the court may award to the person who brought such suit, out of the proceeds of such suit or any settlement of any claim involved therein, which shall be collected, an amount which in the judgment of the court is fair and reasonable compensation to such person for disclosure of the information or evidence not in the possession of the United States when such suit was brought. Any such award shall in no event exceed one-tenth of the proceeds of such suit or any settlement thereof.

(2) In any such suit when not carried on by the United States as herein provided, whether heretofore or hereafter brought, the court may award to the person who brought such suit and prosecuted it to final judgment, or to settlement, as provided in clause (B), out of the proceeds of such suit or any settlement of any claim involved therein, which shall be collected, an amount, not in excess of one-fourth of the proceeds of such suit or any settlement thereof, which in the judgment of the court is fair and reasonable compensation to such person for the collection of any forfeiture and damages; and such person shall be entitled to receive to his own use such reasonable expenses as the court shall find to have been necessarily incurred and all costs the court may award against the defendant, to be allowed and taxed according to any provision of law or rule of court in force, or that shall be in force in suits be-

tween private parties in said court: *Provided*, That such person shall be liable for all costs incurred by himself in such case and shall have no claim therefor on the United States. As amended June 25, 1936, c. 804, 49 Stat. 1921; Dec. 23, 1943, c. 377, § 1, 57 Stat. 608.

Act Dec. 23, 1943, cited to text, amended section generally.

Act June 25, 1936, cited to text, changed the name of the "Supreme Court of the District of Columbia" to "district court of the United States for the District of Columbia". This change should be made in this section and said Act June 25, 1936, should be added to credit.

Federal Rules of Civil Procedure

Dismissal of action, judgment and costs, Rules 41, 54.

Preservation of section under Rules, see notes by Advisory Committee under Rules 41 and 54.

¼. Constitutionality

Amendment of this section depriving District Court of jurisdiction to proceed with informer's action when it appeared that suit was based upon evidence or information in possession of United States at time suit was brought, is not unconstitutional on theory that the filing of the complaint in a qui tam action was the acceptance of a contract which constituted property and a vested right in the informer which Congress could not take away. Sherr v. Anaconda Wire & Cable Co., C.C.A.N.Y. 1945, 149 F.2d 680, certiorari denied 66 S. Ct. 143, 326 U.S. 762, 90 L.Ed. 458.

Subsection (c) of this section granting Attorney General power to appear and take over conduct of the litigation, as applied to one who had instituted informer's action prior to amendment, was not unconstitutional as depriving informer of any vested right, since his privilege of conducting the suit was created by sections 231-235 of this title which, prior to final judgment were wholly within control of Congress. U. S. ex rel. Rodriguez v. Weekly Publications, C.C.A.N.Y.1944, 144 F.2d 186. See, also, Bayarsky v. Brooks, D.C.N.J.1953, 110 F.Supp. 175.

Amendment abolishing all qui tam actions, including those pending at effective date of sections 231-235 of this title, wherein it is shown that qui tam plaintiff's only contribution is mere filing of complaint, is not unconstitutional on theory that filing of complaint in qui tam action is acceptance of contract which constitutes property and a vested right in informer which Congress cannot take away. U. S. ex rel. Bayarsky v. Brooks, D.C.N.J.1953, 110 F.Supp. 175.

Subsection (c) of this section, providing that court shall have no jurisdiction to proceed with any such a suit when suit is based upon evidence in possession of the United States at time the suit was brought, is constitutional as against contention that it deprives informer of a vested right. U. S. ex rel. McLaughlin v. American Chain & Cable Co., D.C.N.Y.1945, 62 F.Supp. 302.

Informer in qui tam suit to recover penalties and damages arising out of a fraud committed against the United States had no vested right in cause of action prior to final judgment merely because he filed his suit prior to the filing of any similar suit and was not deprived of contractual statutory rights, or of due process or of equal protection of the law by subsection (c) of this section barring such suits when based on information already in possession of government. U. S. ex rel. Sherr v. Anaconda Wire & Cable Co., D.C.N.Y.1944, 57 F Supp. 106, affirmed 149 F.2d 680, certiorari denied 66 S.Ct. 143, 326 U.S. 762, 90 L.Ed. 458.

The withdrawal of jurisdiction by the amendment to this section where it is not made to appear that the so-called informer has not informed does not offend against U.S.C.A.Const. Art. 3, § 2, since jurisdiction of district courts may be created, limited, or denied by Congress. U. S. ex rel. Rodriguez v. Weekly Publications, D.C.N.Y.1944, 54 F.Supp. 476, appeal dismissed 144 F.2d 186.

One who had instituted an action under this section which had not proceeded to final judgment had no interest or right therein apart from said section and had no right to sue prior to enactment thereof, and said section could be repealed or modified before final judgment without depriving relator of vested right, and amendment of this section and repeal of other part is not unconstitutional. Id.

Amendment of this section granting Attorney General power to appear and take over conduct of the litigation imposed no additional burden on one prosecuting action under such section before amendment and is valid. Id.

½. Construction with other laws

To nullify sections 80, 82-86 of Title 18 governing fraudulent claims against United States by strict interpretation, because of dislike of this section and sections 233, 234 of this title governing action against one presenting fraudulent claim, would be to exercise a "veto power" which Supreme Court does not possess. U. S. ex rel. Marcus v. Hess, Pa. 1943, 63 S.Ct. 379, 317 U.S. 537 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

In interpreting so much of sections 80, 82-86 of Title 18 prohibiting fraudulent claims against United States as said sections share with this section on the same subject, court must give it careful scrutiny lest those be brought within its reach who are not clearly included, but after such scrutiny must give it the fair meaning of its intendment. Id.

This section authorizing informer's action against one presenting fraudulent claim against United States need not be interpreted with utmost strictness, especially where to do so would detract from meaning of sections 80, 82-86 of Title 18 governing fraudulent claims. Id.

9/16. Law governing

The effect of release of some of defendants from further liability on judgment against all of them, with reservation of rights against remaining defendants, in informer's action under sections 231-234 of this title to recover penalties for defrauding United States, must be determined by federal law exclusively. U. S. ex rel. Marcus v. Hess, D.C.Pa.1945, 60 F.Supp. 333, affirmed 154 F.2d 291.

¾. Purpose

The chief purpose of this section and section 231 of this title authorizing informer's action against one presenting fraudulent claim against United States was to provide for restitution of money taken from government by fraud and the device of double damages plus a specified sum was chosen to make sure that government would be made completely whole. U. S. ex rel. Marcus v. Hess, Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

This section does not manifest congressional intent to authorize a layman to carry on such a suit as an attorney for

the United States, but means that such a suit is to be carried on in accordance with the established procedure, requiring that only one licensed to practice law may conduct proceedings in court for anyone other than himself. U. S. v. Onan, C.A.Minn.1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654.

This section and section 231 of this title were enacted to insure vigorous prosecution of suits to recover damages for frauds perpetrated against the United States and to guard against laxity of government enforcement officers. U. S. v. Baker-Lockwood Mfg. Co., C.C.A.Mo.1943, 138 F.2d 48.

The purpose of 1943 amendment was to bring to an end unseemly "race to the courthouse" antics in qui tam cases by abolishing all qui tam actions, including those pending at effective date of sections 231-235 of this title, wherein it was shown that qui tam plaintiff's only contribution was mere filing of the complaint. U. S. ex rel. Bayarsky v. Brooks, D.C.N.J.1953, 110 F.Supp. 175.

The legislative intent in amending this section was to restrict and limit informer suits to cases in which facts are voluntarily disclosed to the Justice Department, which facts are not then in its possession and are of a substantial nature, credible and trustworthy, and which are material to matter under investigation. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo.1946, 65 F. Supp. 645.

The purpose of this section as enacted in 1943 was to eliminate the former practice by which many persons filed suits based on information and alleged facts obtained bodily from indictments returned in the United States courts, from newspaper stories, and from congressional investigations without basis of any original information in possession of informer. U. S. ex rel. Sherr v. Anaconda Wire & Cable Co., D.C.N.Y.1944, 57 F. Supp. 106, affirmed 149 F.2d 680, certiorari denied 66 S.Ct. 143, 326 U.S. 762, 90 L.Ed. 458.

This section, authorizing informer's action, was not intended to apply where there is no collusive bidding in obtaining government contracts, nor any conspiracy between successful bidder and government officials, nor any failure of performance. U. S. ex rel. Edelstein v. Brussell Serving Mach. Co., D.C.N.Y.1943, 51 F. Supp. 760.

⅞. **Retroactive effect**

Qui tam action filed on February 11, 1943, was controlled by subsection (c) of this section effective on December 23, 1943. U. S. ex rel. McLaughlin v. American Chain & Cable Co., D.C.N.Y.1945, 62 F.Supp. 302.

Under provision of subsection (c) of this section that court should have no jurisdiction to proceed with any suit or pending suit brought under this section based upon evidence or information in possession of the United States or its agency, officer, or employee at time suit was brought, District Court was without jurisdiction to proceed after enactment of said subsection in a qui tam action instituted prior to enactment of said subsection by the United States on the relation of an individual and by the individual in his own behalf, in which the United States entered an appearance. U. S. ex rel. Bayarsky v. Brooks, D.C.N.J. 1945, 58 F.Supp. 714.

1. **Control of the suit**

Congress could provide specifically for amount of new information which informer must produce to be entitled to reward, and right of action itself may be subject to control by an administrative official. U. S. ex rel. Marcus v. Hess, Pa. 1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed 443, rehearing denied 63 S.Ct. 756, 318 U. S. 799, 87 L.Ed. 1163.

In informers' action in the name of the United States to recover for alleged fraud in connection with termination of claims against the government, record failed to establish that the plaintiffs had the sole right to control the litigation because of the alleged failure of the government to enter an appearance within 60 days after service of notice of the commencement of the action. U. S. v. Onan, C.A.Minn., 1951, 190 F.2d 1, certiorari denied 72 S. Ct. 112, 342 U.S. 869, 96 L.Ed. 654.

The United States was a real "party in interest" in civil action by the United States on the relation of an informer to recover penalties and damages for making false claim against the United States and as such was entitled to appear and be heard in protection of its interests. U. S. v. Baker-Lockwood Mfg. Co., C.C.A. Mo.1943, 138 F.2d 48.

Where the United States proceeded with due diligence to institute action under sections 231 and 232 of this title, it was entitled to precedence in the trial of such action over an informer's action against the same defendants and based on same cause of action, though informer's action was filed two days earlier. Id.

An informer, who institutes action under authority of this section providing penalty for making a false claim against United States Government or dealing fraudulently with United States property, is entitled to prosecute the action to final judgment, and, when so prosecuted, he has a "property" in the judgment which cannot be taken from him by any settlement, compromise, or pardon on the part of the government, but he cannot discontinue the action without notice to the government, and permission of the court and United States Attorney is by this section required to supervise the procedure in the action. U. S. ex rel. Marcus v. Lord Electric Co., D.C.Pa.1942, 43 F.Supp. 12.

Where an action under this section had been commenced by one person for himself and for the United States, a second action by another person for the same relief was required to be stayed, since the only plaintiff in such an action must be the United States, no matter who brings it on its behalf, and under the requirement that the proceeds should be divided between the United States and the person bringing the action, there can be no other division, and the first plaintiff has sole control of the action. U. S. v. B. F. Goodrich Co., D.C.N.Y. 1941, 41 F.Supp. 574.

1½. **Notice of suit**

The written notice by registered mail required to be given to Attorney General of pendency of qui tam suit by informer for prosecuting false claims against United States is the only notice necessary of a suit pending on Dec. 23, 1943, the date of amendment of this section authorizing such suits. U. S. v. Pittman, C.C.A.Fla. 1945, 151 F.2d 851, certiorari denied 66 S. Ct. 1022, 328 U.S. 843, 90 L.Ed. 1617.

1¾. —— **Waiver of**

The general appearance of United States within statutory 60-day period in a qui tam suit brought by informer because of prosecution of false claims against United States waived any defect in required statutory notice to Attorney General as to pendency of such action. U. S. v. Pittman, C.C.A.Ala.1945, 151 F.2d 851, certiorari denied 66 S.Ct. 1022, 328 U.S. 843, 90 L.Ed. 1617.

3. Nature of action

The remedy by informer's action against one presenting fraudulent claim against the United States does not lose quality of a "civil action" because more than precise amount of so-called actual damage is recovered. U. S. ex rel. Marcus v. Hess, Pa.1943, 63 S.Ct. 379, 317 U. S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

An action under this section is not a "derivative action" in the same sense as one brought by a stockholder for the benefit of a corporation, since recovery is solely for the benefit of the United States and the informer, and hence there can be but one action and one division of money collected, and subsequent attempts by other persons can have no standing and cannot be consolidated with the original action. U. S. v. B. F. Goodrich Co., D.C.N.Y.1941, 41 F.Supp. 574.

The gravamen of action in nature of qui tam suit, on behalf of United States, to recover penalty, provided for by section 231 of this title, and double damages for presentation of false, fictitious or fraudulent claim against the government, is fraud. United States ex rel. Rodriguez v. Weekly Publications, D.C. N.Y.1949, 9 F.R.D. 179.

3¼. Diligent prosecution

Subsection (c) of this section contemplates diligence as a condition to maintenance of standing as a litigant. U. S. ex rel. Shinn v. State of Tenn., D.C. Tenn., 74 F.Supp. 635.

Since notices and disclosure contemplated by this section should be simultaneous, or nearly simultaneous with filing of complaint, qui tam plaintiff should not be allowed a longer time for compliance than 60 day period given the United States in which to intervene. U. S. ex rel. Shinn v. State of Tenn., D.C. Tenn.1947, 74 F.Supp. 635.

3½. Service of process

In informers' action to recover for alleged fraud in connection with termination claims against the government where plaintiffs were enjoined from further intermeddling during the time reserved to the government to proceed with its prosecution and the record showed the plaintiffs had actual knowledge of contempt proceedings for violation of the injunction and in addition both plaintiffs personally appeared without objection, they were not entitled to complain subsequently that they were not duly served with process. U. S. v. Onan, C.A.Minn.1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654.

A foreign corporation, maintaining an office in Philadelphia, Pennsylvania, for purpose of soliciting sales, most of which were subject to approval by New York office, was "doing business" within Eastern District of Pennsylvania, so as to authorize service of summons in an informer's action against the corporation upon district manager who was in charge of its office. U. S. v. Anaconda Wire & Cable Co., D.C.Pa.1943, 52 F.Supp. 824.

4. Previous criminal prosecution

A private person could maintain informer's action against persons submitting fraudulent and collusive bids on hospital constructed with P.W.A. assistance, though they had previously been indicted for presenting fraudulent claims and had paid fines. U. S. ex rel. Ostrager v. New Orleans Chapter, Associated General Contractors of America, La.1943, 63 S.Ct. 393, 393 U.S. 562, 87 L.Ed. 458.

Proceedings under this section authorizing informer's action against one presenting fraudulent claim against the United States are "remedial" and impose a "civil sanction" and hence did not subject persons previously prosecuted under section for presenting fraudulent claims to "double jeopardy." U. S. ex rel. Marcus v. Hess, Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

Government's action under sections 231–233 of this title for alleged frauds in selling to Federal Surplus Commodities Corporation, as defendants' product, government-owned egg powder delivered to defendants merely for packaging, was not subject to dismissal because of pendency of similar action which, though involving same contracts, was for frauds under contracts by defendants to manufacture egg powder. U. S. v. Samuel Dunkel & Co., D.C.N.Y.1945, 61 F.Supp. 697.

4½. Similar action by government

Where action by United States for alleged fraudulent practices in presentation of claims for airplane engines manufactured for the United States was still pending, an identical action by a private person except for additional allegation that during period subsequent to filing of government's action, defendants had knowingly used defective materials in airplane engines manufactured for the United States, was properly dismissed since the two petitions were in substance the same. Hillgrove v. Wright Aeronautical Corp., C.C.A.Ohio 1945, 146 F.2d 621.

The government having first commenced an action under this section and section 231, another action at instance of informer will not lie if actions are identical. U. S. ex rel. Benjamin v. Hendrick, D.C.N.Y.1943, 52 F.Supp. 60.

Where only difference between complaint of the United States under this section and section 231, and complaint by alleged informer was that informer spoke of projects not only in named counties but throughout the United States and that informer demanded a larger sum of money, the actions were identical and informer's action was not maintainable. Id.

5. Offenses authorizing suit

Where contracts for electrical work on P.W.A. projects were made with local governmental units rather than United States, but substantial portion of contractors' pay came from United States, contractors' conduct in conspiring to rig bidding on such projects was within section 231 of this title prohibiting presentation of fraudulent "claim upon or against the Government of the United States", and authorized informer's action against such contractors. U. S. ex rel. Marcus v. Hess, Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

Where federal government contract with dairyman provided for delivery of fresh milk, delivery of recombined milk was not in compliance with contract, though federal specifications allegedly would have permitted delivery of reconstituted milk. Faulk v. U. S., C.A.Tex. 1952, 198 F.2d 169.

6. Persons entitled to sue

Under this section authorizing "any person" to bring informer's action against one presenting fraudulent claim against United States, one who allegedly contributed nothing to discovery of the crime could bring such action, even after same defendants had been indicted and fined on plea of nolo contendere. U. S. ex rel. Marcus v. Hess, Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

This section providing that court shall have no jurisdiction to proceed with any

suit brought whenever it shall be made to appear that such suit was based on evidence or information in the possession of the United States, or any agency, officer or employee thereof at the time such suit was brought, means not that plaintiff must in his pleadings or otherwise negative knowledge on part of government agents, but that court shall lose jurisdiction whenever that fact is established in case. U. S. v. Rippetoe, C.A.S.C. 1949, 178 F.2d 735.

Under informer this section, knowledge on part of a government official who is implicated in the fraud does not preclude suit by the informer. Id.

6½. Jurisdiction

In informers' action to recover for alleged fraud in connection with termination claims against the government, where the court enjoined plaintiffs from intermeddling in the case during the time reserved to the government to proceed with its prosecution, filing of notice of appeal from the order did not oust the trial court of jurisdiction to adjudge the plaintiffs in contempt of court for violation of the order by instituting another action without notice to the government. U. S. v. Onan, C.A.Minn.1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654.

District Court had no jurisdiction of action under this section and section 231 of this title against Committee on Admissions and Grievances, based on their alleged misconduct in distributing among themselves fees collected from applicants for admission to bar, and in destroying bar examination papers and excluding Negroes from membership on the committee. Laughlin v. Clephane, D. C.D.C.1947, 77 F.Supp. 103.

The Alabama district court had jurisdiction of parties and causes of action by United States to recover forfeitures and double damages for false claims against the United States in connection with furnishing butane gas to federal housing projects in Alabama. U. S. v. Gardner, D.C.Ala.1947, 73 F.Supp. 644.

7. Dismissal

Even if contracts between defendants and another unlawfully gave defendants a monopolistic advantage without which they would not have secured their contracts with the United States, where defendants did not represent that they had not secured an unlawful monopoly of the market, there was no "fraud" within section 231 of this title imposing liability on person making false claims against the United States, and therefore action to recover penalty was properly dismissed. U. S. ex rel. Brensilber v. Bausch & Lomb Optical Co., C.C.A.N.Y. 1942, 131 F.2d 545, affirmed 64 S.Ct. 187, 320 U.S. 711, 88 L.Ed. 417, rehearing denied 64 S.Ct. 256, 320 U.S. 814, 88 L.Ed. 492.

In action on behalf of United States to recover penalty and double damages for presentation of false claims against the United States, motion to dismiss for failure to state a cause of action was properly granted notwithstanding provision of section 231 of this title under which action was brought that action once filed may not be withdrawn or discontinued without written consent of the judge and of the United States Attorney, since the provision of that section is intended to apply to a different situation. U. S. ex rel. Fletcher v. Fahey, 1941, 121 F.2d 28, 73 App.D.C. 257, certiorari denied 62 S.Ct. 84, 314 U.S. 624, 86 L.Ed. 501.

In action against members and executive officers of the Federal Home Loan Bank Board to recover on behalf of the United States double the amount of money paid for stock of the Home Owners' Loan Corporation, on theory that the money had been secured by the false claim that the corporation had been legally incorporated, complaint charging that members of the Board had spread upon the Board's records a paper purporting to be a charter of the Home Owners' Loan Corporation, that they transmitted a copy of the resolution to the Secretary of the Treasury and received money from him in payment for stock of the corporation was properly dismissed for failure to state a cause of action as against contention that section 1461 et seq. of Title 12 did not authorize Board to issue charter, and that Board could create the Home Owners' Loan Corporation only by obtaining a charter from the District of Columbia or some state. Id.

Where action was brought under sections 231-35 of this title charging Tennessee and others with conspiracy to defraud the United States by presentation of false claims, and court ordered qui tam plaintiff to file evidence within 30 days of his compliance with this section relating to notices and disclosure but more than 200 days later no such evidence had yet been filed and United States had not intervened, action would be dismissed by court in its own motion for want of prosecution. U. S. ex rel. Shinn v. State of Tenn., D.C.Tenn.1947, 74 F.Supp. 635.

Charge under sections 231-234 of this title to defraud the United States by presentation of false claims should be prosecuted with dispatch, or dismissed in absence of impressive reason for delay. U. S. ex rel. Shinn v. State of Tenn., D.C.Tenn.1947, 74 F.Supp. 635.

Where, before qui tam suit was filed, all material information for suit was elicited by government from hearings held by House Naval Affairs Committee, action was dismissed for want of jurisdiction notwithstanding that relator furnished at least some information to Department of Justice which it did not previously possess. U. S. ex rel. McLaughlin v. American Chain & Cable Co., D.C.N.Y.1945, 62 F.Supp. 302.

A motion for dismissal of informer's action for incapacity to sue was proper to raise objection that a similar action had been commenced by the United States, since speaking demurrers are permitted under rule 7 following section 723c of Title 2d. U. S. ex rel. Benjamin v. Hendrick, D.C.N.Y.1943, 52 F.Supp. 60.

8. Complaint, sufficiency of

Allegation that defective engines had been constructed for United States by using defective piston rings was merely an allegation of evidence as to circumstances out of which a false claim or representation covered by false claims might arise, and did not state a cause of action where facts constituting the false claim or fraud were not set forth. Hillgrove v. Wright Aeronautical Corp., C.C.A.Ohio 1945, 146 F.2d 621.

Each of 105 fraudulent vouchers upon which the government paid nearly $1,000,000 to defendants for wire and cable supplied to Army and Navy under three contracts was a separate claim for which a forfeiture could be recovered by the government. U. S. v. Collyer Insulated Wire Co., D.C.R.I.1950, 94 F.Supp. 493.

Amended complaint in action under section 231 of this title which alleged that defendants had entered into conspiracy for approval of false and fraudulent claims against United States government in that they falsely represented that their publication was entitled to admission to mails as second class matter, stated a "claim" upon which relief could be granted. U. S. ex rel. Rodriguez v.

Weekly Publications, D.C.N.Y.1946, 68 F. Supp. 767.

Complaints under section 231-233 of this title for frauds in selling dried eggs to Federal Surplus Commodities Corporation were not subject to dismissal as failing to show that defendants made to a person or officer in government's service a claim upon or against government or department or officer thereof. U. S. v. Samuel Dunkel & Co., D.C.N.Y.1945, 61 F.Supp. 697.

In determining sufficiency of complaint in qui tam action charging conspiracy to defraud government by a number of contractors operating under cost-plus fixed fee contracts, failure to charge that conspiracy contemplated that contractors would pool unlawful gains and apportion them among themselves, while not determinative, was an element to be considered. U. S. ex rel. Ryan v. Broderick, D.C.Kan.1945, 59 F.Supp. 189.

A complaint in informer's action under this section, alleging that contracts for the manufacture of certain articles for the Navy Department were obtained by defendant on the misrepresentation that defendant itself would manufacture such articles, was insufficient to allege a cause of action where defendant merely contracted that it had the organization and facilities for doing the work and pleadings showed that defendant manufactured some of the parts, subcontracting for others, and the contracts expressly provided for subcontracting. U. S. ex rel. Edelstein v. Brussell Sewing Mach. Co., D.C.N.Y.1943, 51 F.Supp. 760.

A complaint, in informer's action under this section, alleging that excess profits were made by defendant under contracts to manufacture certain articles for the Navy Department, was insufficient to support cause of action where the contracts revealed that Navy Department was fully cognizant of the cost of manufacture of such articles, contained statements of government's estimated cost, and accepted price, and excess profits if any could be recaptured by the government under renegotiation. Id.

8a. Answer

In informer suit, plea that United States, with full knowledge of filing of the suit and of matters involved therein, entered into settlement of defendants' claims under contract, by attached instrument which recited settlement of specified claims under contract, was insufficient to allege a settlement and would be stricken out. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo. 1946, 68 F.Supp. 902.

8b. Counterclaim

Where informer's qui tam action is carried on by the United States, defendant cannot interpose a counterclaim against informer, who loses all control over litigation and ceases to be an "opposing party" within rule 13(a, b) following section 723c of Title 28 permitting counterclaim against opposing party, but, on government's withdrawal from informer's action, the informer's interest revives and informer is again in control and can carry on the action and becomes the "opposing party." U. S. ex rel. Rodriquez v. Weekly Publications, D.C.N.Y. 1947, 74 F.Supp. 763.

An informer's qui tam action is not subject to rule 13(a, b) following section 723c of Title 28 permitting a counterclaim against the opposing party notwithstanding the withdrawal of the government from the action, since to permit such a counterclaim would be a strong deterrent to genuine informer's actions and since to permit a counterclaim would be contrary to public policy. Id.

9. Prior action, stay pending decision

Where a prior action under sections 231-234 of this title by another person for himself and for the United States to recover for same alleged fraudulent claims was pending in federal District Court for District of Rhode Island, present action would be stayed until final determination on the merits of the prior action. U. S. v. Anaconda Wire & Cable Co., D.C.Pa. 1943, 52 F.Supp. 824.

10. Right to share in recovery

Under sections 231-234 of this title, the successful prosecution of the suit, rather than the discovery of fraudulent conduct, is the test of the right to share in any recovery. U. S. ex rel. Rodriguez v. Weekly Publications, C.C.A.N.Y.1944, 144 F.2d 186. See, also, U. S. ex rel. Bayarsky v. Brooks, D.C.N.J.1953, 110 F. Supp. 175.

11. Review

In action to recover for alleged fraud in connection with termination of claims against the United States where lower court entered an order quashing both the garnishee summons and the service of summons on defendants and subsequently entered an order consolidating the cases quashing the garnishee summons and enjoining plaintiffs from taking any further steps in the litigation, the orders were appealable in view of the injunctional features. U. S. v. Onan, C.A.Minn. 1951, 190 F.2d 1, certiorari denied 72 S. Ct. 112, 342 U.S. 869, 96 L.Ed. 654.

Where order allowing the United States to intervene in an informer's action, pursuant to subsection (c) of this section, did not give the United States any permanent status as a party, but merely added a new party plaintiff on a tentative basis pending development, such order was not a "final order" from which an appeal would lie. U. S. ex rel. Rodriguez v. Weekly Publications, C.C. A.N.Y.1944, 144 F.2d 186.

An order permitting the United States to intervene in an informer's action, pursuant to subsection (c) of this section, which order merely had effect of postponing the trial until the United States could be added as a party plaintiff, could not be regarded as "final" and appealable on ground that it constituted an injunction restraining relator from carrying on the action, or denying an injunction to relator against prosecution of action by United States. Id.

12. Consent to dismissal

Purported dismissal of informer's action by stipulation of relator and defendant without statutory consent of judge and district attorney did not constitute a dismissal, and hence was not such a second dismissal as would operate as an adjudication on merits under rule 41(a) following section 723c of Title 28. U. S. v. Samuel Dunkel & Co., D.C.N.Y. 1945, 61 F.Supp. 697.

The prohibition against dismissal of informer's suit without consent in writing of judge and district attorney refers to voluntary dismissals and is intended to discourage repeated bringing of suits which are without merit but which might be brought merely to satisfy complainant's desire for revenge and to discourage private compromise settlements. U. S. ex rel. Laughlin v. Eicher, D.C.D.C. 1944, 56 F.Supp. 972.

13. Information possessed by United States

In action under this section plaintiff need not negative knowledge on part of government officials of evidence on which action is based. U. S. v. Rippetoe, C.A.S. C.1949, 178 F.2d 735.

Under subsections (c, d) of this section providing that court should have

no jurisdiction to proceed with any suit or pending suit brought by informer based on evidence or information in possession of United States or its agency, officer or employee at time suit was brought, but giving United States 60 days after notice in which to enter an appearance, District Court was not deprived of jurisdiction of qui tam action previously brought by an informer on information in possession of United States, where the United States had timely filed an appearance in the action. U. S. ex rel. Bayarsky v. Brooks, C.C.A.N.J.1946, 154 F.2d 344, certiorari denied 67 S.Ct. 47, 329 U.S. 716, 91 L.Ed. 691.

Under this section authorizing informers' suits against persons presenting false claims against United States, provision that court shall have no jurisdiction to proceed with "any such suit" whenever it appears that suit was based on evidence in possession of United States when suit was brought, applies only to suits carried through by informer and does not deprive court of jurisdiction of such a suit adopted and prosecuted by United States after being instituted by an informer, and it is only when the United States fails to adopt or prosecute informer's suit that defendants may raise an issue as to merit of informer's activity in bringing suit. U. S. v. Pittman, C.C.A.Ala.1945, 151 F.2d 851, certiorari denied 66 S.Ct. 1022, 328 U.S. 843, 90 L.Ed. 1617.

The word "such", in phrase "any such suit" in this section providing that court shall have no jurisdiction to proceed with any such suit by informer against persons presenting false claims against United States, under circumstances specified, is a descriptive and limiting word referring always to a class just before pointed out. Id.

Where informer in qui tam suit admitted that suit was based upon information in possession of the United States at the time suit was brought and that informer had not in his possession and had not voluntarily disclosed to Attorney General substantial evidence and information which was not theretofore in possession of Department of Justice, government's motion for an order determining that action was based upon evidence or information in possession of the United States was granted. U. S. ex rel. Sherr v. Anaconda Wire & Cable Co., D. C.N.Y.1944, 57 F.Supp. 106, affirmed 149 F.2d 680, certiorari denied 66 S.Ct. 143, 326 U.S. 762, 90 L.Ed. 458.

13a. "Substantial evidence and information"—definition of

The words "substantial evidence and information", as used in clause (c) of this section, mean evidence and information that is real, not imaginary, and which on trial, if accepted by jury as true, might have an actual and material bearing on charges made in complaint. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo.1946, 65 F.Supp. 645.

13b. —— Time for disclosure

Clause (c) of this section does not require that informer must personally possess all information and evidence on which suit is based and convey such evidence and information to Justice Department before suit is filed, but informer brings himself within exception to said clause by furnishing substantial evidence and information on which suit is based, not then in possession of Justice Department, provided such substantial evidence and information is disclosed to Attorney General prior to filing of suit. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo.1946, 65 F. Supp. 645.

13c. Jurisdictional issue, relator's evidence

Under this section as enacted in 1943, proof on jurisdictional issue need not go to the extent of showing that relator can make a prima facie case. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo.1946, 65 F.Supp. 645.

14. Any such suit

Under provision of subsection (c) of this section, that court should have no jurisdiction to proceed with "any such suit" brought under this section based upon evidence or information in possession of United States, its agency, officer, or employee at time suit was brought, quoted words are to be given their literal meaning, and have reference to any suit instituted under this section, including suits begun as private suits in which the United States entered an appearance and carried them on, as well as purely private suits. U. S. ex rel. Bayarsky v. Brooks, D.C.N.J.1945, 58 F. Supp. 714.

The words "any such suit", as used in subsection (c) of this section requiring that court shall have no jurisdiction to proceed with any such suit when other specified matter shall appear, means a suit brought by an informer as well for himself as for the United States to recover the penalties and damages for which a person who knowingly makes false claims against the government is liable. U. S. ex rel. Sherr v. Anaconda Wire & Cable Co., D.C.N.Y.1944, 57 F. Supp. 106, affirmed 149 F.2d 680, certiorari denied 66 S.Ct. 143, 326 U.S. 762, 90 L.Ed. 458.

15. Abatement

The right of Attorney General to appear in a pending qui tam action does not have effect of conferring jurisdiction on court, if that action should otherwise be abated because it was based on information already in possession of government. U. S. ex rel. Sherr v. Anaconda Wire & Cable Co., D.C.N.Y.1944, 57 F. Supp. 106, affirmed 149 F.2d 680, certiorari denied 66 S.Ct. 143, 326 U.S. 762, 90 L.Ed. 458.

Where admissions of relator in qui tam suit to recover penalties and damages for which defendant was allegedly liable for making false claim against the government established that action was based upon evidence or information in possession of government at time suit was brought, court had no jurisdiction to proceed with suit notwithstanding that Attorney General had filed a notice of appearance, and hence suit would be abated. Id.

16. Refusal to enter suit

In an informer's suit, subsection (B) of this section forbidding the discontinuance of such suits without the consent of the judge and district attorney was complied with where acting attorney general refused to enter the suit, which was tantamount to the district attorney's consent to dismiss the suit and the consent of the court being obtained if the motion was sustained. U. S. ex rel. Laughlin v. Eicher, D.C.D.C.1944, 56 F. Supp. 972.

17. Summary judgment

In qui tam action arising out of defendants' alleged fraudulent claims against government under cost-plus fixed fee contracts for compensation for wages of an employee after his services had terminated, affidavit of paymaster that claim for reimbursement had only been made for amount paid employee as represented by photostatic copies of pay checks attached to affidavit authorized summary judgment for defendants. U.

S. ex rel. Ryan v. Broderick, D.C.Kan. 1945, 59 F.Supp. 189.

In qui tam action arising out of defendants' alleged fraudulent claims against government under cost-plus fixed fee contract for allegedly overstating number of yards of dirt that had been hauled and moved, affidavits of civil engineer and others, who had a knowledge of the facts and who were not defendants, negativing such allegations, authorized summary judgment for defendants. Id.

18. Bill of particulars

In action under sections 231-233 of this title for alleged frauds in sale of dried eggs to Federal Surplus Commodities Corporation, demand for bill of particulars under 48 subdivisions, covering 3½ pages of single-spaced typewriting, showed by its prolixity that its purpose was not to enable defendants to prepare a responsive pleading, and would be denied where complaint was so drawn the defendants could easily answer. U. S. v. Samuel Dunkel & Co., D.C.N.Y.1945, 61 F.Supp. 697.

19. Compensation for services

Where order dismissing qui tam action, brought under sections 231-235 of this title by individual in his own behalf and on behalf of United States, for failure of relator to furnish "original" information was reversed on other grounds, and the United States, which had timely filed appearance in action, subsequently entered into compromise settlement of case, finding that individual had furnished no "original" information was binding on sole remaining issue as to his right to an informer's fee. U. S. ex rel. Bayarsky v. Brooks, D.C.N.J.1953, 110 F.Supp. 175.

Claim to informer's fee, made by individual who had set in motion investigation resulting in twenty-five guilty pleas, an aggregate of $20,000 in fines, and a civil recovery to United States of $225,000, but who was not person who brought qui tam action under sections 231-235 of this title, was not within jurisdiction of Federal District Court in which qui tam action had been filed. Id.

Where qui tam action was dismissed for lack of jurisdiction on ground that action was based upon evidence or information in possession of the United States at time action was brought, court had no authority to allow relator compensation for his services in drawing complaint and other services in connection with the action. U. S. ex rel. McLaughlin v. American Chain & Cable Co., D.C.N.Y.1945, 62 F.Supp. 302.

20. Jury trials

Where district court enjoined plaintiffs from further intermeddling in an informers' action during the time reserved to the government to proceed with its prosecution and they violated the injunction by instituting another action without notice to the government and the district court adjudged the plaintiffs in contempt, the plaintiffs were not entitled to a jury since the proceeding was civil in nature and the punishment meted out was wholly remedial. U. S. v. Onan, C.A. Minn.1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654.

One suing on behalf of United States to recover penalty, provided for by section 231 of this title, and double damages for presentation of false, fictitious or fraudulent claim against government is entitled to jury trial, but after making demand therefor, he cannot dispense with such trial, except with his adversary's consent. U. S. ex rel. Rodriguez v. Weekly Publications, D.C.N.Y.1949, 9 F. R.D. 179.

An action on behalf of United States to recover penalty and double damages for presentation of false, fictitious, or fraudulent claim against government for allowance of second class pound postage rates for mailing copies of magazine to subscribers is not a case wherein convenience would be furthered or prejudice avoided by separate jury trials of issues of defendant's liability and damages. Id.

21. Contempt

Where plaintiffs filed informers' actions to recover for alleged fraud in connection with termination claims against the government and plaintiffs were enjoined from further intermeddling during the time reserved to the government to proceed with the prosecution of the action, commencement of a second action by plaintiffs without notice to the government and the issuance of a garnishee summons was punishable as for contempt on the ground that the plaintiffs attempted to accomplish substantially that which they were enjoined from doing. U. S. v. Onan, C.A.Minn. 1951, 190 F.2d 1, certiorari denied 72 S. Ct. 112, 342 U.S. 869, 96 L.Ed. 654.

Where plaintiffs instituted an informers' action and garnisheed large bank deposits of defendants and in violation of injunction order commenced another action, again garnisheeing large deposits of defendants and subjecting defendants to substantial expense, and the court adjudged the plaintiffs in contempt imposing a fine of $2,500 upon the plaintiffs was proper. Id.

22. Motion to dismiss

In informers' action to recover for alleged fraud in connection with termination claims against the United States where large sums of money beyonging to the defendants were garnisheed motions of defendants challenging the right of plaintiffs to prosecute the action or serve the summons raised jurisdictional questions and was inconsistent within alleged acts on their part recognizing the validity of the summons. U. S. v. Onan, C.A.Minn.1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654.

§ 233. Duty of district attorney as to such cases

3. Contracting officer

In view of the provisions of this section placing prosecution for damages and penalty resulting from acts covered by section 231 of this title in charge of district attorney and subjecting wrongdoer to criminal prosecution as well as to civil liability, in absence of a specific statute or executive order, disposition of a fraud case can not be placed in hands of a contracting officer representing, not the Department of Justice, but the War Department. U. S. v. U. S. Cartridge Co., D.C.Mo.1948, 78 F.Supp. 81.

A contracting officer has no authority to determine or settle liability to government of a contractor under section 231 of this title, but his authority is limited, under section 106(c) of Title 41, to administrative settlement of disputes of fact arising in execution of contract, not crimes in nature of frauds of fact resulting from its execution. Id.

§ 234. Repealed. Dec. 23, 1943, c. 377, § 2, 57 Stat. 609.

2. **Right to recover penalty**

That plaintiff had furnished no information to the government regarding facts upon which action was based before filing an informer's action to recover statutory penalty and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work on projects did not preclude maintenance of action. U. S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

3. **Repeal, effect of**

The repeal of a statute under which a suit for a penalty is brought terminates plaintiff's right to recover. U. S. ex rel. Rodriguez v. Weekly Publications, C.C.A.N.Y.1944, 144 F.2d 186. See, also, U. S. ex rel. Bayarsky v. Brooks, D.C.N.J.1953, 110 F.Supp. 175.

§ 235. Limitation of suit

½. **Construction**

Provision of this section that every action shall be commenced within 6 years from commission of wrongful act and not afterwards should be strictly construed. U. S. ex rel. Nitkey v. Dawes, C.C.A.Ill.1945, 151 F.2d 639, certiorari denied 66 S.Ct. 808, 327 U.S. 788, 90 L.Ed. 1015.

5. **—— Torts**

A complaint, which alleged that defendants were guilty of fraudulent representations in procurement of contracts to supply tire requirements of federal government by reason of their submitting collusive bids, and that as a result government was forced to pay more for its tires than it would have paid had bids been competitive, sounded in "tort" and was not on "contract" and was insufficient to state a cause of action under sections 231-235 of this title, since it was not an action for damages sustained by the government because of the presentation for payment or approval of fraudulent claims within the meaning of section 231 of this title. Mandel v. Cooper Corporation, D.C.N.Y.1941, 42 F.Supp. 317.

7. **Payment, settlement or release**

The General Accounting Office would have no power to waive right to prosecute an informer suit or to settle it. U. S. ex rel. Coates v. St. Louis Clay Products Co., D.C.Mo.1946, 68 F.Supp. 902.

12. **—— Inception date**

Where action under sections 231-235 of this title was based on theory that national bank's contract to assume and pay state bank's deposit liabilities was invalid under Smith-Hurd Ann.St., ch. 16½, § 12 because national bank did not assume all liabilities of state bank including loan from Reconstruction Finance Corporation, cause of action, if any, arose when contract was entered into and performed and after expiration of 6 years from time cause of action arose court lost jurisdiction of subject matter. U. S. ex rel. Nitkey v. Dawes, C.C.A.Ill. 1945, 151 F.2d 639, certiorari denied 66 S. Ct. 808, 327 U.S. 788, 90 L.Ed. 1015.

13. **Tolling of statute**

Where action under sections 231-235 of this title was based on theory that national bank's contract to assume and pay state bank's deposit liabilities was invalid under Smith-Hurd Ann.St., ch. 16½, § 12, because national bank did not assume all liabilities of state bank including its loan from Reconstruction Finance Corporation, but where all parties to contract and government had full knowledge of facts at time contract was executed, fact that national bank in subsequent reports to Comptroller of Currency did not list as one of its liabilities loan by Reconstruction Finance Corporation to state bank did not toll this section, on theory of concealment of alleged misconduct. U. S. ex rel. Nitkey v. Dawes, C.C.A.Ill.1945, 151 F.2d 639, certiorari denied 66 S.Ct. 808, 327 U.S. 788, 90 L.Ed. 1015.

Provision of this section that every action shall be commenced within 6 years from commission of wrongful act and not afterwards is not to be tolled or extended on account of fraud. Id.

14. **Jurisdiction**

Jurisdiction of subject matter cannot be acquired even by consent, in opposition to provision of this section which requires action to be commenced in 6 years from commission of wrongful act. U. S. ex rel. Nitkey v. Dawes, C.C.A.Ill. 1945, 151 F.2d 639, certiorari denied 66 S. Ct. 808, 327 U.S. 788, 90 L.Ed. 1015.

The provision of this section requiring action to be commenced within 6 years from commission of the wrongful act and not afterwards is more than a mere statute of limitations and it is jurisdictional and strictly limits the power of court to assume jurisdiction. Id.

Provision this section that suits be commenced within six years from commission of act is a limitation, not only on plaintiff's right to maintain the action, but also on the jurisdiction of the court. U. S. v. MacEvoy, D.C.N.J.1950, 10 F.R.D. 323.

§ 236. Meritorious claims against United States not subject to lawful adjustment; submission to Congress by Comptroller General. When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the Congress by a special report containing the material facts and his recommendation thereon. **(Apr. 10, 1928, c. 334, 45 Stat. 413.)**

§ 237. Same; limitation of time on claims and demands

(1) Every claim or demand (except a claim or demand by any State, Territory, possession or the District of Columbia) against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title, shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within ten full years after the date such claim first accrued: *Provided*, That when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established.

(2) Whenever any claim barred by subsection (1) shall be received in the General Accounting Office, it shall be returned to the claimant, with a copy of this section, and such action shall be a complete response without further communication. Oct. 9, 1940, c. 788, §§ 1, 2, 54 Stat. 1061.

Subsecs. (1) and (2) of this section are from sections 1 and 2, respectively, of Act Oct. 9, 1940, cited to text.

Section is also set out as section 71a of this title.

Termination of war and emergencies. Joint Res. July 25, 1947, c. 327, § 3, 61 Stat. 451, provided that in the interpretation of subsec. (1) of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on September 8, 1939, and May 27, 1941.

Cross References. Checks drawn on Treasurer of United States or designated depositaries, exception from limitations, see section 132 of this title.

1. New promises

The Comptroller General's settlements of claims against United States for overtime pay for manual work as employees of Alaska Road Commission by allowing portions thereof for services rendered within ten years before submission of claims and tacit assent to such settlements by claimants in failing to object thereto constituted binding accords, which merged out claims and created new promises to pay amounts allowed, so that actions on accounts thus stated were not barred by statute of limitations, though not filed within six years after last dates on which claimants performed services. Marr v. U. S., Ct. Cl. 1952, 106 F.Supp. 204.

2. Power of court

The Court of Claims can judicially notice that one claiming overtime pay for manual work as employee of Alaska Road Commission under statute which was misinterpreted by government administrative officers, resulting in denial of its benefits to many employees entitled thereto, was not culpably dilatory in failing to assert claim until after rendition of Supreme Court and Court of Claims decisions construing statute as entitling such employees to overtime pay, though claim was not submitted to Comptroller General within statutory period of ten years after accrual thereof. Marr v. U. S., Ct.Cl.1952, 106 F.Supp. 204.

§ 238. Settlement of damage claims of Federal penal and correctional institutions' employees

The Attorney General, and such other officer or officers as he may designate for such purpose, are authorized to consider, determine, adjust, and pay claims, not exceeding in any case the sum of $1,000, of persons employed in Federal penal and correctional institutions for damage to or loss or destruction of personal property occurring incident to such employment. No claim shall be allowed under this section unless (a) the property claimed to be damaged, lost, or destroyed is determined to be reasonable, useful, necessary, or proper under the attendant circumstances; (b) such damage, loss, or destruction shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agent, or employee, and shall not have occurred at quarters occupied by the claimant which are not assigned to him or otherwise provided in kind by the Government; and (c) such claim shall have been presented in writing within one year after the occurrence of the accident or incident out of which such claim arises. Acceptance by any claimant of an award hereunder shall release the United States, its agents or employees, from any further claim by such claimant arising out of the same incident. June 10, 1949, c. 187, § 1, 63 Stat. 167.

Appropriations. Section 2 of Act June 10, 1949, cited to text, provided that: "There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act [this section]."

Legislative History: For legislative history and purpose of Act June 10, 1949, cited to text, see 1949 U.S.Code Cong.Service, p. 1342.

CHAPTER 7.—BUREAU OF THE MINT, MINTS, AND ASSAY OFFICES

THE BUREAU OF THE MINT

§ 251. Bureau established; director

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 252. Director; salary and expenses

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. Per diem to civilian officers and employees of United States in lieu of actual expenses for subsistence, see section 823 of Title 5, Executive Departments and Government Officers and Employees.

§§ 253, 254

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

MINTS AND ASSAY OFFICES

§ 262. Denver mint; coinage of silver

The coinage of silver and minor coins shall be carried on at the mint of the United States at Denver, in the State of Colorado. Feb. 20, 1895, c. 105, §§ 1, 3, 28 Stat. 673.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. Coinage of gold coins was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title.

§§ 263, 264

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 265. Salaries of officers of coinage mints

The officers of the several coinage mints shall be entitled to salaries, to be paid monthly, in accordance with the provisions of section 677 of Title 5. R.S. § 3498; June 20, 1874, c. 328, § 1, 18 Stat. 96; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Apr. 4, 1924, c. 84, 43 Stat. 78; Jan. 22, 1925, c. 87, 43 Stat. 764; Mar. 5, 1928, c. 126, § 2, 45 Stat. 193.

Compensation of certain civilian positions in the field service to be adjusted by the heads of the several executive departments and establishments, see sections 678, 678a of Title 5, Executive Departments, Government Officers and Employees.

§ 266. Appointment of assistants and employees

The word "officers" in line 2 should be "offices."

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 267. Duties of coiner and melter and refiner performed by superintendent

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 268. Salaries of assistants, clerks, and laborers employed in the mints

Reference "677" should be substituted for "676" and "and section 265 of this title," should be inserted following "provided for in this section".

"Mar. 5, 1928, c. 126, § 2, 45 Stat. 193" should be added to the credit.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. Compensation of certain civilian positions in the field service to be adjusted by the heads of the several executive departments and establishments, see sections 678, 678a of Title 5, Executive Departments, Government Officers and Employees.

§§ 269–272

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 273. Duties of superintendents as to coin and bullion

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

EXECUTIVE ORDER [NO. 6558]

Relating To Receipt Of Gold On Consignment By The Mints And Assay Offices

By virtue of the authority vested in me by section 5 (b) of the act of October 6, 1917, as amended by section 2 of the act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking and for other Purposes", I, Franklin D. Roosevelt, President of the United States of America, do declare that a period of national emergency exists, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following regulations for receiving gold on consignment for sale:

Section 1. The United States mints and assay offices are hereby authorized, subject to such regulations as may from time to time be prescribed by the Secretary of the Treasury, to receive on consignment gold which the mint or assay office concerned is satisfied has not been held in noncompliance with the Executive orders, or the orders of the Secretary of the Treasury, issued under sections 2 and 3 of the act of March 9, 1933, or in noncompliance with any regulations or rulings made thereunder or licenses issued pursuant thereto.

Sec. 2. The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this Executive order.

Sec. 3. This Executive order and any regulations issued hereunder may be modified or revoked at any time. (Promulgated January 15, 1934, Ex. Ord. No. 6558.)

1. Liability of superintendent

An action by Bank of Spain against Superintendent of United States Assay Office to recover silver which had been purchased by the United States from former government of Spain could not be maintained, since the Superintendent was entitled to immunity as an agent of the United States, especially where his acts were lawful. Banco de Espana v. Federal Reserve Bank of New York, C.C.A.N.Y.1940, 114 F.2d 438.

§§ 274, 275.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

The possession of gold coins and bullion was prohibited except under Government license by Ex.Ord.No.6260, Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

§§ 276, 277

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 278. Business of assay office at New York

The words ", and the proceeds returned to the assay office" should be inserted after "coined" in line 10.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 279. Officers at New York assay office; appointment

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 280. Same; salaries

The officers of the assay office at New York shall be entitled to salaries in accordance with the provisions of section 677 of Title 5. R.S. § 3556; Apr. 4, 1924, c. 84, 43 Stat. 78; Jan. 22, 1925, c. 87, 43 Stat. 764; Mar. 5, 1928, c. 126, § 2, 45 Stat. 193.

Compensation of certain civilian positions in the field service to be adjusted by the heads of the several executive departments and establishments, see sections 678, 678a of Title 5, Executive Departments, Government Officers and Employees.

§ 281. Same; duties

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

1. Actions

An action by Bank of Spain against Superintendent of United States Assay Office to recover silver which had been purchased by the United States from former government of Spain could not be maintained, since the Superintendent was entitled to immunity as an agent of the United States, especially where his acts were lawful. Banco de Espana v. Federal Reserve Bank of New York, C.C.A.N.Y.1940, 114 F.2d 438.

§ 283. Business of assay offices

The business of the United States assay offices enumerated in section 261 of this title other than the assay office at New York, and that of any other assay offices which may be established, shall be confined to the receipt of gold and silver bullion, for melting and assaying. R.S. § 3558;

June 8, 1878, c. 170, 20 Stat. 102; Feb. 20, 1895, c. 105, §§ 1, 2, 28 Stat. 673.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. Receipt of deposits of gold bullion by assay offices, see section 430 of this title.

§ 284. Appointment of officers at assay offices

The officer of the assay offices embraced by section 283 of this title shall be an assayer in charge, who shall also perform the duties of melter, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive a salary in accordance with section 677 of Title 5. R.S. § 3559; Feb. 20, 1895, c. 105, § 2, 28 Stat. 673; Jan. 22, 1925, c. 87, 43 Stat. 764; Mar. 5, 1928, c. 126, § 2, 45 Stat. 193.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. Duties of superintendent of melting and refining department of mint, see section 274 of this title.

§§ 285, 286

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

CHAPTER 8.—COINS, COINAGE, AND CURRENCY

COINS AND COINAGE

Sec.
311a. Policy of United States as to proportion of silver to gold [New].
315a. Same; coinage of quarter-eagle discontinued [New].
315b. Gold coinage discontinued; existing gold coins withdrawn from circulation; coins and gold to be formed into bars [New].
316a. Acquisition and use of silver; payment therefor; expenses; penalties [New].
316b. Same; means of regulation; penalties [New].
316c. Coinage of silver mined after July 1, 1939; seigniorage; regulations [New].
316d. Industrial use of silver held or used by United States; acceptance for coinage and seigniorage of silver mined after July 1, 1946 [New].
317a–317e. Special coinage of minor coins [New].
317e–1. Expenses of coinage [New].
317f. Rules and regulations to effectuate sections 317a–317e [New].
376a. Prohibition against issuance of commemorative coins [New].
380. Silver 50-cent pieces in commemoration of the three hundredth anniversary of the founding of Maryland [New].
381. Silver 50-cent pieces in commemoration of the one hundredth anniversary of the admission of Arkansas into the Union [New].
382. Silver 50 cent pieces in commemoration of the two hundredth anniversary of the birth of Daniel Boone [New].
383. Silver 50-cent pieces in commemoration of three-hundredth anniversary of founding of Colony of Connecticut [New].
384. Silver 50-cent pieces in connection with California-Pacific International Exposition [New].
384a. Same; recoinage authorized [New].
385. Silver 50-cent pieces in commemoration of one hundred and fiftieth anniversary of founding of city of Hudson, New York, and three hundredth anniversary of founding of city of Providence, Rhode Island [New].
386. Silver 50-cent pieces in commemoration of four hundredth anniversary of Expedition of Cabeza de Vaca and opening Old Spanish Trail [New].
387. Silver 50-cent pieces in commemoration of the sesquicentennial anniversary of the founding of the capitol of South Carolina at Columbia [New].
388. Silver 50-cent pieces in commemoration of fiftieth anniversary of Cincinnati, Ohio, as music center [New].
388a. Silver 50-cent pieces in commemoration of three hundred anniversary of founding of first settlement on Long Island, New York [New].

Sec.
388b. Silver 50-cent pieces in commemoration of centennial celebration at Cleveland, Ohio, known as Great Lakes Exposition [New].
388c. Silver 50-cent pieces in commemoration of two hundred and fiftieth anniversary of founding of New Rochelle, New York [New].
388d. Silver 50-cent pieces in commemoration of three hundredth anniversary of landing of Swedes in Delaware [New].
388e. Silver 50-cent pieces in commemoration of one hundredth anniversary of establishment of Territorial Government of Wisconsin [New].
388f. Silver 50-cent pieces in commemoration of one-hundredth anniversary of incorporation of Bridgeport, Connecticut, as city [New].
388g. Silver 50-cent pieces in commemoration of one hundred and fiftieth anniversary of issuance of Lynchburg, Virginia, Charter [New].
388h. Silver 50-cent pieces in commemoration of two hundred and fiftieth anniversary of founding of Albany, N. Y. [New].
388i. Silver 50-cent pieces in commemoration of one hundredth anniversary of founding of Elgin, Ill. [New].
388j. Silver 50-cent pieces in commemoration of seventy-fifth anniversary of battle of Gettysburg [New].
388k. Silver 50-cent pieces in commemoration of three hundred and fiftieth anniversary of Sir Walter Raleigh's colony on Roanoke Island, North Carolina [New].
388l. Silver 50-cent pieces to celebrate opening of San Francisco—Oakland Bay Bridge [New].
388m. Silver 50-cent pieces in commemoration of three-hundredth anniversary of founding of York County, Maine [New].
388n. Silver 50-cent pieces in commemoration of seventy-fifth anniversary of Battle of Antietam [New].
Sec.
388o. Silver 50-cent pieces in commemoration of three-hundredth anniversary of Norfolk, Virginia, land grant, etc. [New].

CURRENCY

405a. Same; issuance; circulation; security; legal tender; redemption; coinage of silver dollars [New].
405b. Gold certificates; issuance authorized [New].
408a. Redemption of currency in gold forbidden; exceptions [New].
408b. Increase or decrease in weight of gold dollar; adjustment of reserve [New].
418a. Same; competitive bids and splitting of award [New].

GOLD COIN AND GOLD BULLION [New]

440. Short title.
441. Title to gold coin and bullion transferred to United States; payment therefor.
442. Regulations for the acquisition and use of gold; exemption of gold held in Philippines or beyond continental United States.
443. Acquisition and use of gold in violation of law; penalties.
444. Definitions.
445. Right to amend or repeal reserved; separability clause.
446. Laws repealed.

SILVER PURCHASE [New]

448. Short title.
448a. Rules and regulations.
448b. Definitions.
448c. Appropriation.
448d. Right to amend or repeal; separability clause.
448e. Laws repealed.

COINS AND COINAGE

Gold Reserve Act of 1934, see sections 212, 411–415, 417, 467, of Title 12, Banks and Banking, and sections 315b, 408a, 408b, 440–446, 733, 734, 752, 753, 754a, 754b, 757a, 771, 821, 822a, 822b, and 824 of this title.

War 5-cent pieces of silver and copper, see section 642 et seq. of Appendix to Title 50, War and National Defense.

§ 311. Policy of United States as to bimetallism

See sections 315b, 408a, 408b, 441–446, 462, 463, and 821–824 of this title.

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

The possession of gold coins and bullion was prohibited except under Government license by Ex.Ord.No.6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

1. Unlimited coinage of silver

The President has authority to proclaim and put into effect a plan for the unlimited coinage (at the present fixed ratio to gold and subject to 50 percent seigniorage) of domestic silver produced after the effective date of the proclamation. (1933) 37 Op.Atty.Gen. 344.

§ 311a. Policy of United States as to proportion of silver to gold

It is declared to be the policy of the United States that the proportion of silver to gold in the monetary stocks of the United States should be increased, with the ultimate objective of having and maintaining, one fourth of the monetary value of such stocks in silver. (June 19, 1934, c. 674, § 2, 48 Stat. 1178.)

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

§ 313. International bimetallism

Words "and 542" should be inserted immediately following "178" and the "and" preceding "178" should be deleted.

§ 314. Standard unit of value

The dollar of gold nine-tenths fine consisting of the weight determined under the provisions of section 821 of this title shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity. R.S. § 3511; Mar. 14, 1900, c. 41, § 1, 31 Stat. 45; May 12, 1933, c. 25, Title III, § 43, 48 Stat. 51; June 5, 1933, c. 48, § 2, 48 Stat. 113; Jan. 30, 1934, c. 6, § 12, 48 Stat. 342; Aug. 23, 1935, c. 614, § 203 (a), 49 Stat. 704; Jan. 23, 1937, 2 p. m., c. 5, § 2, 50 Stat. 4; July 6, 1939, c. 260, § 3, 53 Stat. 998.

Words "consisting of twenty-five and eight tenths grain", appearing in original enactment, have been omitted in view of provisions of section 821 of this title authorizing the President to fix the weight of the gold dollar within certain limitations, and words "consisting of the weight determined under the provisions of section 821 of this title" give effect to this provision.

Authority to President to fix by proclamation the weight of the gold dollar, in grains nine-tenths fine, see section 821(b)(2) of this title.

Weight of gold dollar reduced to 15⁵⁄₂₁ grains nine-tenths fine, see Proclamation No. 2072 set out as note to section 821 of this title.

§ 315. Gold coins of United States

Section has been omitted from the Code. The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

§ 315a. Same; coinage of quarter-eagle discontinued

Section, Act Apr. 11, 1930, c. 131, 46 Stat. 154, was omitted from Code. It discontinued coinage of quarter-eagles. All gold coinage was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

§ 315b. Gold coinage discontinued; existing gold coins withdrawn from circulation; coins and gold to be formed into bars

No gold shall after January 30, 1934, be coined, and no gold coin shall after January 30, 1934, be paid out or delivered by the United States: *Provided, however,* That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with section 367 of this title. All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct. (Jan. 30, 1934, c. 6, § 5, 48 Stat. 340.)

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Repeals. All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

1. Notice of sale under mortgage or deed of trust

Where notice of sale under trust deed required cash payment in United States gold coin, and subsequent thereto, but prior to sale obligations requiring payment in gold were by statute made payable in legal tender, failure to change notice so as to allow such payment held not to invalidate sale. McLaughlin v. Mutual Building & Loan Ass'n of Las Vegas, 1936, 60 P.2d 272, 57 Nev. 181.

§ 316. Silver coins; weight

The silver coins of the United States shall be a dollar; a half-dollar, or fifty-cent piece; a quarter-dollar, or twenty-five-cent piece; and a dime, or ten-cent piece. The weight of said coins shall be that determined by the President under the provisions of section 821 of this title. R.S. § 3513; Feb. 28, 1878, c. 20, § 1, 20 Stat. 25; May 12, 1933, c. 25, Title

III, § 43, 48 Stat. 51; June 5, 1933, c. 48, § 2, 48 Stat. 113; Jan. 30, 1934, c. 6, § 12, 48 Stat. 342; Aug. 23, 1935, c. 614, § 203 (a), 49 Stat. 704; Jan. 23, 1937, 2 p. m., c. 5, § 2, 50 Stat. 4; July 6, 1939, c. 260, § 3, 53 Stat. 998.

Words "said coins" * * * "that determined by the President under the provisions of section 821 of this title" have been substituted for words "four hundred and twelve and one-half grains troy of standard silver, the weight of the half-dollar shall be one hundred and ninety-two and nine-tenths grains; the quarter dollar and the dimes shall be respectively, one-half and one-fifth of the weight of said half-dollar," in view of authority of President to fix the weight of silver dollars and subsidiary coins within limitations under section 821 of this title.

Authority to President to fix by proclamation the weight of silver dollars in grains nine-tenths fine, see section 821(b)(2) of this title.

Stabilization of domestic prices of silver, see Proclamation No. 2067, as modified, set out as note under section 821 of this title.

2. Contracts

Under perpetual lease of water power privilege requiring yearly rent of 260 ounces of silver of standard value and fineness of 1859 silver coinage, or equivalent in gold, rentals held payable in silver bullion of fineness of coinage of 1859, especially in view of evidence showing intention of parties. Holyoke Water Power Co. v. American Writing Paper Co., Inc. (C. C. A. Mass. 1933) 68 F.(2d) 261.

§ 316a. Acquisition and use of silver; payment therefor; expenses; penalties

Whenever in the judgment of the President such action is necessary to effectuate the policy of sections 311a, 316a, 316b, 405a, 448–448e, 734a and 734b of this title, he may by Executive order require the delivery to the United States mints of any or all silver by whomever owned or possessed. The silver so delivered shall be coined into standard silver dollars or otherwise added to the monetary stocks of the United States as the President may determine; and there shall be returned therefor in standard silver dollars, or any other coin or currency of the United States, the monetary value of the silver so delivered less such deductions for seigniorage, brassage, coinage, and other mint charges as the Secretary of the Treasury with the approval of the President shall have determined: *Provided*, That in no case shall the value of the amount returned therefor be less than the fair value at the time of such order of the silver required to be delivered as such value is determined by the market price over a reasonable period terminating at the time of such order. The Secretary of the Treasury shall pay all necessary costs of the transportation of such silver and standard silver dollars, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any silver withheld in violation of any Executive order issued under this section or of any regulations issued pursuant thereto shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and, in addition, any person failing to comply with the provisions of any such Executive order or regulation shall be subject to a penalty equal to twice the monetary value of the silver in respect of which such failure occurred. (June 19, 1934, c. 674, § 7, 48 Stat. 1179.)

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

See Proclamation Dec. 21, 1933, No. 2067 set out in the note under section 821 of this title.

Ex. Order No. 7877, April 28, 1938, revoked Ex. Order No. 6814, August 9, 1934, and Ex. Order No. 6895-A, November 2, 1934, which revoked orders requiring the delivery of silver to the United States mints. The revoking order contained a saving clause. 3 Fed.Reg. 998.

§ 316b. Same; means of regulation; penalties

Whenever in his judgment such action is necessary to effectuate the policy of sections 311a, 316a, 316b, 405a, 448–448e, 734a, and 734b of this title, the Secretary of the Treasury is authorized, with the approval of the President, to investigate, regulate, or prohibit, by means of licenses or otherwise, the acquisition, importation, exportation, or transportation of silver and of contracts and other arrangements made with respect thereto; and to require the filing of reports deemed by him reasonably necessary in connection therewith. Whoever willfully violates

the provisions of any license, order, rule, or regulation issued pursuant to the authorization contained in this section shall, upon conviction, be fined not more than $10,000 or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. (June 19, 1934, c. 674, § 6, 48 Stat. 1178.)

See Executive Order No. 6814, set out in note to section 316a of this title.

Approval of the President. Power of the Secretary of the Treasury to perform, without the approval, ratification, or other action of the President, the functions vested in him by this section, see Ex. Ord.No.10289, September 17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

§ 316c. Coinage of silver mined after July 1, 1939; seigniorage; regulations

(a) Each United States coinage mint shall receive for coinage into standard silver dollars any silver which such mint, subject to regulations prescribed by the Secretary of the Treasury, is satisfied has been mined subsequently to July 1, 1939, from natural deposits in the United States or any place subject to the jurisdiction thereof.

(b) The Director of such mint with the consent of the owner shall deduct and retain of such silver so received 45 per centum as seigniorage for services performed by the Government of the United States relative to the coinage and delivery of silver dollars. The balance of such silver so received, that is 55 per centum, shall be coined into standard silver dollars and the same or any equal number of other standard silver dollars shall be delivered to the owner or depositor of such silver, and no provisions of law taxing transfers of silver shall extend or apply to any delivery of silver to a United States mint under this section. The 45 per centum of such silver so deducted shall be retained as bullion by the Treasury or coined into standard silver dollars and held or disposed of in the same manner as other bullion or silver dollars held in or belonging to the Treasury.

(c) The Secretary of the Treasury is authorized to prescribe regulations to carry out the purposes of this section. Such regulations shall contain provisions substantially similar to the provisions contained in the regulations issued pursuant to the Act of Congress approved April 23, 1918 (40 Stat.L., p. 535), known as the Pittman Act, with such changes as he shall determine prescribing how silver tendered to such mints shall be identified as having been produced from natural deposits in the United States or any places subject to its jurisdiction subsequent to July 1, 1939. July 6, 1939, c. 260, § 4, 53 Stat. 998.

The enacting clause of the Pittman Act, referred to in the text, Apr. 23, 1918, c. 63, 40 Stat. 535, read as follows: "An Act To conserve the gold supply of the United States; to permit the settlement in silver of trade balances adverse to the United States; to provide silver for subsidiary coinage and for commercial use; to assist foreign governments at war with the enemies of the United States; and for the above purposes to stabilize the price and encourage the production of silver."

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Silver mined after July 1, 1946. Provisions of this section as to time of delivery and seigniorage rate of silver mined after July 1, 1946, are affected by section 316d of this title.

§ 316d. Industrial use of silver held or owned by United States; acceptance for coinage and seigniorage of silver mined after July 1, 1946

After July 31, 1946, the Secretary of the Treasury is authorized to sell or lease for manufacturing uses, including manufacturing uses incident to reconversion and the building up of employment in industry, upon such terms as the Secretary of the Treasury shall deem advisable, to any person, partnership, association, or corporation, or any department of the Government, any silver held or owned by the United States at not less

than 90.5 cents per fine troy ounce: *Provided*, That at all times the ownership and the possession or control within the United States of an amount of silver of a monetary value equal to the face amount of all outstanding silver certificates issued before or after July 31, 1946 by the Secretary of the Treasury shall be maintained by the Treasury: *Provided further*, That after July 31, 1946 each United States coinage mint shall receive for coinage silver mined after July 1, 1946, from natural deposits in the United States or any place subject to the jurisdiction thereof, as provided in section 316c of this title, and tendered to such mint within one year after the month in which the ore from which it is derived was mined, except that the seigniorage to be deducted shall be 30 per centum instead of 45 per centum as provided in section 316(b) of this title. July 31, 1946, c. 718, 60 Stat. 750.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 317. Minor coins; weight and alloy

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Contents of One-Cent Piece. Treasury Department order of Dec. 23, 1942, 7 F.R. 10837, suspending the provisions of this section insofar as they affect the contents of one-cent pieces and setting out the physical properties thereof, expired on Dec. 31, 1946.

Cross References. Power of President to fix weight of subsidiary coins, see section 821 of this title.

War 5-cent pieces of silver and copper, see section 642 et seq. of Appendix to Title 50, War and National Defense.

§ 317a. Same; conservation of strategic war metals; 1- and 3-cent pieces; period of coinage; composition; silver content; application of other laws

(a) There shall be included among the coins of the United States one or more special series of coins: *Provided* That the coinage, issuance, and circulation of the coins provided for by this section shall be subject in all respects to the conditions, terms, provisions, limitations, and exceptions specified in subsections (b) to (j) hereof.

(b) No denomination or series of coins provided for by this section shall be coined unless and until the Secretary of the Treasury shall have issued an order that shall (1) prescribe the particular denomination or series, stating the pertinent physical properties, including content, weight, dimensions, shape, and design: *Provided*, That in determining such physical properties the Secretary shall take into consideration the use of such coins in coin-operated devices; and (2) state that he has determined, after consultation with the appropriate officials charged with the production of war material, that the coinage and circulation of the particular series will operate to conserve strategic metals in furtherance of the war effort.

(c) There shall be no coinage pursuant to the provisions of this section after December 31, 1946.

(d) The coinage provided for by this section shall not be of other denominations than 1 cent piece and 3 cent piece, and the amount of coinage of each such denomination shall be prescribed by the Secretary of the Treasury.

(e) Each denomination of coins provided for by this section shall constitute a series: *Provided*, That if one denomination is coined in more than one physical form or composition, the pieces of each different physical form or composition shall constitute a separate series.

(f) The coinage provided for by this section shall be in pieces of such metallic, or other or different content, weight, dimensions, shape, limits

of tolerance, and design (including devices and legends), as the Secretary of the Treasury may by regulation prescribe for the particular denomination or series: *Provided*, That no silver shall be used for the coinage provided for by this section except as specified in subsection (g) hereof.

(g) For the coinage of any series, the Secretary of the Treasury is hereby authorized to allocate to the Director of the Mint, at such times and in such amounts as the Secretary of the Treasury deems necessary, any silver bullion in the monetary stocks of the United States not then held for redemption of any outstanding silver certificates. Silver contained in any pieces coined under section 1 of this section shall be accounted for by entries in the fund established for the purchase of metal for minor coinage: *Provided*, That the value of any silver bullion accounted for in said fund shall not be considered for the purpose of determining the statutory limit of said fund: *Provided further*, That the gain from the coinage of silver hereunder shall be accounted for by entries in the minor coinage profit fund. If any series is coined of silver or in part of silver, the pieces of said series shall nevertheless be deemed to be other than silver coins, subsidiary silver coins, silver coinage, or subsidiary silver coinage within the meaning of the monetary laws of the United States.

(h) The coinage provided for by this section shall be minor coinage, and the provisions of section 340 of this title, as amended, shall apply with respect to any necessary purchases of metal or other material for the coinage provided for by this section: *Provided, however*, That contracts for said purchases may be entered into in accordance with the provisions of section 611 of Appendix to Title 50.

(i) For the purpose of section 341 of this title, as amended, the coinage provided for in this section shall be in the same category as the minor coins referred to in said section 341.

(j) Except as provided in sections 317a, 317c–317e, and 317f of this title, the coinage provided for by this section shall be subject in all respects to the monetary laws of the United States, including, but not by way of limitation, the laws pertaining to counterfeiting, to legal tender, and to the distribution, exchange, and redemption of coins and currency. Dec. 18, 1942, c. 767, § 1, 56 Stat. 1064.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Appropriation. Section 6 of Act Dec. 18, 1942, cited to text, provided: "There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $5,000,000 which shall be available for expenditure under the direction of the Secretary of the Treasury and in his discretion, for any purpose in connection with the carrying out of this Act [section 317a, former section 317b, sections 317c–317e, 317f of this title]."

Cross References. War 5-cent pieces of silver and copper, see section 642 et seq. of Appendix to Title 50, War and National Defense.

§ 317b. Same; suspension of coinage of certain coins authorized

Codification. Section, Act Dec. 18, 1942, c. 767, § 2, 56 Stat. 1065, which authorized the suspension of the coinage of minor coins during the period when the coinage provided for by section 317a of this title might be coined, is now inoperative in view of subsec. (c) of said section 317a which provides that there shall be no coinage pursuant to the provisions of that section "after December 31, 1946".

§ 317c. Same; recoinage and sale of worn and uncurrent coins

The Secretary of the Treasury shall cause all worn and uncurrent minor coin of the United States, heretofore or hereafter issued, received in the Treasury, to be melted down, the resulting metal and material to be used for coinage or sold, which sale is hereby authorized. Such coin (including any metal and material derived therefrom), and any loss resulting from the difference between the nominal or face value of such coin and the amount the same will produce in new coin, and any loss resulting from

the sale of the metal or other material, shall be accounted for by entries in the fund established for the purchase of metal for minor coinage and said fund shall be reimbursed out of the special fund denominated the minor coinage profit fund: *Provided,* That the value of any coin (including any metal and material derived therefrom) accounted for as provided herein shall not be considered for the purpose of determining the statutory limit of the fund established for the purchase of metal for minor coinage. The proceeds from any sale pursuant to this section shall be accounted for by entries in the fund established for the purchase of metal for minor coinage. Dec. 18, 1942, c. 767, § 3, 56 Stat. 1065.

Appropriation. Section 6 of Act Dec. 18, 1942, cited to text, provided: "There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $5,000,000 which shall be available for expenditure under the direction of the Secretary of the Treasury and in his discretion, for any purpose in connection with the carrying out of this Act [section 317a, former section 317b, this section, and sections 317d, 317e, 317f of this title]."

Cross References. Purchase of metal for minor coinage; minor coinage profit fund, see section 340 of this title.

§ 317d. Same; authority to make contracts

The Director of the Mint, with the approval of the Secretary, is authorized to enter into such contracts as may be necessary to carry out the purposes of sections 317a, 317c–317e, and 317f of this title. Dec. 18, 1942, c. 767, § 5, 56 Stat. 1066.

Codification. Former provisions of this section, which required that the special coinage provided for by section 317a of this title should be coined in United States coinage mints or in whole or in part at such other places as the Director, with the approval of the Secretary of the Treasury, might designate, are no longer operative in view of subsection (c) of said section 317a which provides that there shall be no coinage pursuant to the provisions of this section "after December 31, 1946".

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 317e. Uncurrent silver dollars; formation into bars; use for coinage

All worn and uncurrent standard silver dollars now held or hereafter received in the Treasury shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct; and the Director of the Mint is authorized to cause the bars obtained pursuant to the provisions of this section to be used for coinage: *Provided, however,* That whenever such bars are obtained from standard silver dollars held as security for outstanding silver certificates, an equal amount of silver shall be allocated as security for outstanding silver certificates when such bars are used for coinage. Dec. 18, 1942, c. 767, § 4, 56 Stat. 1066.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 317e—1. Expenses of coinage

To enable the Secretary of the Treasury to carry out the provisions of section 317e of this title, the expenses or adjustments in connection with the forming of worn and uncurrent, standard silver dollar into bars shall be charged against the gain arising from the coinage of such bars. Mar. 18, 1943, c. 17, Title I, § 1, 57 Stat. 32.

§ 317f. Rules and regulations to effectuate sections 317c–317e

The Secretary of the Treasury is authorized to issue such orders, regulations, and instructions as he may deem necessary or proper to carry out the purposes of sections 317a, 317c–317e, 317f of this title. Dec. 18, 1942, c. 767, § 7, 56 Stat. 1066.

§ 318. Coins reduced in weight by abrasion

Section has been omitted from the Code. The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

Acquisition and use of gold in violation of law to subject the gold to forfeiture and subject person to penalty equal to twice the value of the gold, see section 443 of this title.

Redemption of currency in gold forbidden, see section 408a of this title.

See section 441 of this title.

§ 319. Recoinage of gold coins

Section has been omitted from the Code. Gold coinage was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

§ 320. Recoinage of uncurrent subsidiary silver coins

The word "to" in line 4 should read "shall".

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

Repeals. Effective July 1, 1935, the permanent appropriation provided for in this section was repealed by Act June 26, 1934, c. 756, § 2, 48 Stat. 1226, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) of this title.

§ 321. Standard for silver coins

The standard for silver coins of the United States shall be such that of one thousand parts by weight nine hundred shall be of pure metal and one hundred of alloy. The alloy of the silver coins shall be of copper. R.S. § 3514; Jan. 30, 1934, c. 6, § 5, 48 Stat. 340.

The following words were omitted from the original enactment of this section upon the discontinuance of the coinage of gold under section 315b of this title: "both gold and" * * * "The alloy of the gold coins shall be of copper, or of copper and silver; but the silver shall in no case exceed one-tenth of the whole alloy."

§ 322. Coins prohibited

Word "chapter" in text means Title 37 of Revised Statutes which is set out in sections 204 and 205 of Title 15, Commerce and Trade, sections 254, 261, 263–266, 268–287, 314, 315, 316, 317–319, 321, 322, 324, 325, 327–332, 334–336, 340, 341, 343–358, 360, 363–366, 368, 369, 371, and 373–375 of this title.

"Jan. 30, 1934, c. 6, § 5, 48 Stat. 340" should be added to credit.

Word "gold" appearing in original enactment of section has been omitted. The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. War 5-cent pieces of silver and copper, see section 642 et seq. of Appendix to Title 50, War and National Defense.

§ 323. Withdrawal of discontinued pieces and recoinage

Section has been omitted from the Code. The coinage of gold was discontinued and all existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

§ 324. Inscriptions on coins

Words "gold and" in last clause preceding words "silver coins" were omitted, inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

Jan. 30, 1934, c. 6, § 5, 48 Stat. 340" should be added to credit.

§ 325. Gold and silver bars

The possession of gold coins and bullion was prohibited except under Government license by Ex.Ord.No.6260, Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

See section 315b of this title.

§ 326. Exchange of gold coins for gold bars

The possession of gold coins and bullion was prohibited except under Government license by Ex.Ord.No.6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 327. Barring gold bullion; refusal of deposits

Words "coin or" before word "bars" were omitted from original enactment. "Jan. 30, 1934, c. 6, § 5, 48 Stat. 340" should be added to the credit.

Words "coin or" before word "bars" were omitted from original enactment inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

The possession of gold coins and bullion was prohibited except under Government license by Ex.Ord.No.6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

Coinage of gold discontinued, see section 315b of this title.

See also sections 441 and 446 of this title.

§ 328. Silver bullion for forming into bars

See section 821 of this title and Proclamation Dec. 21, 1933, No. 2067, set out in the note to said section.

§§ 329–332

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 333. Same; standard gold bullion

Section has been omitted from the Code. Coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

§ 334. Verification of calculations of value of deposits; counter-signing certificate

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 335. Purchase of bullion for silver coinage; silver-profit fund

In order to procure bullion for the silver coinage authorized by this chapter, other than the silver dollar, the superintendents, with the approval of the Director of the Mint, as to price, terms, and quantity, shall purchase such bullion with the bullion fund. The gain arising from the coinage of such silver bullion into coin of a nominal value exceeding the cost thereof shall be credited to a special fund denominated the silver-profit fund. This fund shall be charged with the wastage incurred in such coinage, with the recoinage loss on silver coins recoined pursuant to section 320 of this title, and with the cost of distributing silver coins. The balance remaining to the credit of this fund shall be from time to time, and at least twice a year, covered into the Treasury of the United States. R.S. § 3526; Mar. 2, 1889, c. 411, 25 Stat. 955; May 10, 1950, c. 173, 64 Stat. 157.

1950 Amendment. Act May 10, 1950, cited to text, amended section by inserting third sentence so as to provide that losses incurred in the recoinage of subsidiary coins, wastage incurred in silver coinage, and the cost of distribution shall be charged to the silver-profit fund.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agen-

cies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. Proclamations stabilizing silver production, coinage, etc., are set out under section 821 of this title.

Legislative History: For legislative history and purpose of Act May 10, 1950, cited to text, see 1950 U.S.Code Cong. Service, p. 2292.

2. Purchase of silver

Mandamus to compel purchase of silver under Pittman Act (now repealed) denied. U. S. ex rel. American Silver Producers' Ass'n v. Mellon (1929) 32 F.(2d) 415, 59 App.D.C. 24, certiorari denied 50 S. Ct. 19, 280 U. S. 561, 74 L. Ed. 616.

§ 336. Paying out silver coins for gold coins

Section, R.S. § 3527; Mar. 3, 1887, c. 396, § 3, 24 Stat. 635; May 29, 1920, c. 214, § 1, 41 Stat. 654, provided for payment of silver coins for gold coins in sums not less than $100 and the transportation of same; however, the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

§ 337. Exchange of subsidiary silver coin for lawful money

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 338. Same; duty of Treasurer

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 340. Purchase of metal for minor coinage; profit fund

For the purchase of metal for the minor coinage, authorized by this chapter, a sum not exceeding $1,000,000 in lawful money of the United States shall, upon the recommendation of the Director of the Mint and in such sums as he may designate, with the approval of the Secretary of the Treasury, be transferred to the credit of the superintendents of the mints at Philadelphia, San Francisco, and Denver, at which establishments, until otherwise provided by law, such coinage shall be carried on. The superintendents, with the approval of the Director of the Mint as to price, terms, and quantity shall purchase the metal required for such coinage by public advertisement, and the lowest and best bid shall be accepted, the fineness of the metals to be determined on the mint assay. The gain arising from the coinage of such metals into coin of a nominal value, exceeding the cost thereof, shall be credited to the special fund denominated the minor coinage profit fund; and this fund shall be charged with the wastage incurred in such coinage, and with the cost of distributing said coins, as hereinafter provided. The balance remaining to the credit of this fund, and any balance of the profits accrued from minor coinage under former Acts, shall be, from time to time, and at least twice a year, covered into the Treasury of the United States. (As amended Aug. 14, 1937, c. 631, 50 Stat. 647; June 21, 1941, c. 213, 55 Stat. 255.)

Word "chapter" in text means title 37 of Revised Statutes which is set out in sections 204 and 205 of Title 15, Commerce and Trade, sections 254, 261, 263–266, 268–287, 314, 315, 316, 317–319, 321, 322, 324, 325, 327–332, 334–336, 341, 343–358, 360, 363–368, 369, 371, and 373–375 of this title.

Act June 21, 1941, cited to text, substituted the figure "$1,000,000" for "$600,000."

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department,

were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 341. Delivery of minor coins; redemption

Word "chapter" in text means title 37 of Revised Statutes which is set out in sections 204 and 205 of Title 15, Commerce and Trade, sections 254, 261, 263–266, 268–287, 314, 315, 316, 317–319, 321, 322, 324, 325, 327–332, 334–336, 340, 343–358, 360, 363–368, 369, 371, and 373–375 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 343. Transfer of bullion for formation into ingots

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 344. Assay of ingots

"Jan. 23" in last citation should be "Jan. 3."

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 345. Delivery of ingots for coinage

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 346. Standard of ingots used for coinage

No ingots shall be used for coinage which differ from the legal standard more than the following proportions, namely: In silver ingots, six-thousandths; in minor-coinage alloys, twenty-five thousandths, in the proportion of nickel. As amended June 14, 1947, c. 104, § 1, 61 Stat. 132.

1947 Amendment. Act June 14, 1947, cited to text, amended section by substituting "six-thousandths" for "three-thousandths".

Cross References. Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

War 5-cent pieces of silver and copper, see section 642 et seq. of Appendix to Title 50, War and National Defense.

§ 347. Preparation and stamping of bars for payment of deposits

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 348. Deviations allowed in adjusting weights of gold coins

Section R.S. § 3535; Sept. 26, 1890, c. 945, § 1, 26 Stat. 485; Aug. 23, 1912, c. 350, § 1, 37 Stat. 384; Jan. 3, 1923, c. 22, 42 Stat. 1103, related exclusively to gold coins; however, the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

§ 349. Same; silver coins

In adjusting the weight of silver coins the following deviations shall not be exceeded in any single piece: In the dollar, six grains; in the half-dollar, four grains; in the quarter-dollar, three grains; and in the dime, one and one-half grains. As amended June 14, 1947, c. 104, § 2, 61 Stat. 133.

1947 Amendment. Act June 14, 1947, cited to text, amended section to increase the tolerances allowable in adjusting the weight of silver coins which originally were set at 1½ grains regardless of size and weight.

§ 350. Same; minor coins

Word "chapter" in text means title 37 of Revised Statutes which is set out in sections 204 and 205 of Title 15, Commerce and Trade, sections 254, 261, 263–266, 268–287, 314, 315, 316, 317–319, 321, 322, 324, 325, 327–332, 335–336, 340, 341, 343–349, 351–358, 360, 363–368, 369, 371 and 373–375 of this title.

War 5-cent pieces of silver and copper, see section 642 et seq. of Appendix to Title 50, War and National Defense.

§ 351. Delivery of coins to superintendent and trial of pieces

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 352. Sealing and transmitting trial pieces

At every delivery of coins made by the superintendent of coining department to a superintendent, it shall be the duty of such superintendent, in the presence of the assayer, to take indiscriminately a certain number of pieces of each variety for the annual trial of coins, the number for silver coins being not less than one piece for each ten thousand pieces or any fractional part of ten thousand pieces delivered. The pieces so taken shall be carefully sealed up in an envelope, properly labeled, stating the date of the delivery, the number and denomination of the pieces inclosed, and the amount of the delivery from which they were taken. These sealed parcels containing the reserved pieces shall be deposited in a pyx, designated for the purpose at each mint, which shall be kept under the joint care of the superintendent and assayer, and be so secured that neither can have access to its contents without the presence of the other, and the reserved pieces in their sealed envelopes from the coinage of each mint shall be transmitted quarterly to the mint at Philadelphia. A record shall also be kept at the same time of the number and denomination of the pieces so taken for the annual trial of coins, and of the number and denomination of the pieces represented by them and so delivered, a copy of which record shall be transmitted quarterly to the Director of the Mint. Other pieces may at any time be taken for such tests as the Director of the Mint shall prescribe. As amended Jan. 30, 1934, c. 6, § 5, 48 Stat. 340; June 5, 1947, c. 98, 61 Stat. 129.

Codification. Words "being not less than" were inserted after words "silver coins" in lieu of words "gold coins being not less than one piece for each one thousand pieces or any fractional part of one thousand pieces delivered; and for" inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

1947 Amendment. Act June 5, 1947, cited to text, amended section by substituting "ten" in lieu of "two" wherever appearing in section.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§§ 353, 354

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury,

with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 355. Allowance for wastage

The possession of gold coins and bullion was prohibited except under Government license by Ex.Ord.No.6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 356. Statement of balance sheet forwarded to Director of Mint

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. Coinage of gold discontinued and possession forbidden, see notes under section 355 of this title.

§§ 357, 360

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 361. Refining and parting bullion

Act Mar. 4, 1911, c. 240, 36 Stat. 1292, should be added to citation.

Repeal. Act Mar. 4, 1911, c. 240, 36 Stat. 1292, repealed all laws and parts of laws to extent they made a permanent indefinite appropriation for the expenses of parting and refining bullion, effective from and after June 30, 1912.

§ 362. Same; exchange of unparted bullion for fine bars

See sections 315b, 441 and 446 of this title.

Coinage of gold discontinued and possession of it forbidden, see notes under section 355 of this title.

§ 363. Assay commissioners

"Jan. 30, 1934, c. 6, § 5, 48 Stat. 340" should be added to credit.

Words "gold and" preceding words "silver coins" were omitted from original enactment of this section, inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Comptroller of the Currency, the Director of the Mint, and the assayer, all referred to in this section, are officials of the Treasury Department, but such Plan excepted, from the transfer, any function vested by law in the Comptroller of the Currency.

§ 365. Standard weights for mints and assay offices

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Director of the Mint, the superintendent, the assayer, the mints, and the assay offices, all referred to in this section, are within the Treasury Department.

§ 367. Coinage for foreign countries

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 368. National and other medals struck at Philadelphia Mint

"Metals" in line 3 should be "medals" and "metal" in line 7 should be "medal".

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 369. Money arising from charges and deductions covered into Treasury

The money arising from all charges and deductions on and from gold and silver bullion and from all other sources, except the money derived from the manufacture and sale of medals and proof coins and as otherwise provided by and pursuant to this chapter, shall from time to time be covered into the Treasury, and no part of such deductions, or profit on silver or minor coinage, shall be expended in salaries or wages. The money arising from the manufacture and sale of medals and proof coins shall be reimbursed to the appropriation then current and chargeable for the cost of manufacture and sale of medals and proof coins. All expenditures of the mints and assay offices, not herein otherwise provided for, shall be paid from appropriations made by law on estimates furnished by the Secretary of the Treasury. As amended May 10, 1950, c. 172, 64 Stat. 157.

Word "chapter" in text means title 37 of Revised Statutes which is set out in sections 204 and 205 of Title 15, Commerce and Trade, sections 254, 261, 263–266, 268–287, 314, 315, 316, 317–319, 321, 322, 324, 325, 327–332, 334–336, 340, 341, 343–358, 360, 363–368, 371, and 373–375 of this title.

1950 Amendment. Act May 10, 1950, cited to text, amended section to exempt from the provisions of this section all money derived from the manufacture and sale of medals and proof coins and to allow such moneys to be reimbursed to the appropriation from which the expenditures for the manufacture and sale of medals and proof coins were made.

Cross References. Possession of gold bullion and coins forbidden, see notes under section 355 of this title.

Legislative History: For legislative history and purpose of Act May 10, 1950, cited to text, see 1950 U.S.Code Cong. Service, p. 2290.

§ 370. Transfer of bars to depositary; redemption of coin certificates

Act "Jan. 30, 1934, c. 6, § 5, 48 Stat. 340," should be added to credit.

Words "or in exchange for gold coins" were omitted, inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

§ 372. Conversion of currency

(a) Value of Foreign Coin Proclaimed by Secretary of Treasury.—The value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly on the 1st day of January, April, July, and October in each year.

(b) Proclaimed Value Basis of Conversion.—For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after June 17, 1930, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (c), shall be made at the values proclaimed by the Secretary of the Treasury under the provisions of para-

graph (a) of this section, for the quarter in which the merchandise was exported.

(c) Market Rate When no Proclamation.—If no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate. If the date of exportation falls upon a Sunday or holiday, then the buying rate at noon on the last preceding business day shall be used. For the purposes of this subdivision such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal reserve bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange. (June 17, 1930, c. 497, Title IV, § 522, 46 Stat. 739.)

This section was repealed by section 651(a) (1) of the Tariff Act of 1930 (Act June 17, 1930, c. 497, Title IV, 46 Stat. 762 in effect June 18, 1930), but was reenacted to read as set out in the text, by section 522, cited thereto, effective June 18, 1930.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

½. Purpose

Subdivision (c) of this section manifests intent of Congress to provide for valuation for purposes of ad valorem taxes the exchange rate which gives the closest approximation to value in dollars of the imported merchandise. Barr v. U. S., 1945, 65 S.Ct. 522, 324 U.S. 83, 89 L.Ed. 765.

2¼. Publication of rate

The power of Secretary of Treasury to publish certified rate as basis of valuation for purposes of ad valorem taxes may not be exercised in such a way as to defeat the method of assessment provided by Congress. Barr v. U. S., 1945, 65 S.Ct. 522, 324 U.S. 83, 89 L.Ed. 765.

2½. Foreign exchange rate

Under this section, determination of foreign exchange rate for purposes of valuation for ad valorem taxes is left exclusively to the Federal Reserve Bank of New York, which alone is given discretion in computing it, and Secretary of the Treasury must publish the certified rate. Barr v. U. S., 1945, 65 S.Ct. 522, 324 U.S. 83, 89 L.Ed. 765.

The "official rate" of exchange for purpose of assessment and collection of duties upon merchandise imported from Great Britain is the value of the pound sterling as fixed by the British Treasury for export purposes and the "free rate" is the rate at which it can be bought in the exchange markets of the world at prevailing prices. Barr v. U. S., 1947, 161 F.2d 362, 35 C.C.P.A.(Customs) 1.

2¾. Buying rate

Though subdivision (c) of this section speaks only of certification of "buying rate" by Federal Reserve Bank of New York, use of the singular does not preclude certification of more than one rate for particular foreign currency. Barr v. U. S., 1945, 65 S.Ct. 522, 324 U.S. 83, 89 L.Ed. 765.

4. —— Conclusiveness

Action of the Secretary of the Treasury in publishing only one of the foreign exchange rates certified by the Federal Reserve Bank of New York as basis of valuing imported goods for purposes of ad valorem taxes, and decision of collector pursuant to directions of the Secretary, are reviewable. Barr v. U. S., 1945, 65 S.Ct. 522, 324 U.S. 83, 89 L.Ed. 765.

Neither customs collector nor court can inquire into facts on which Secretary of Treasury based his proclamation of value of foreign monetary unit in United States money, and collector is bound to accept Secretary's findings in computing duties on imported merchandise invoiced in such units. Amalgamated Textiles v. U. S., 1936, 84 F.2d 210, 24 C.C.P.A., Customs, 74.

The buying rate of cable transfers as determined by the Federal Reserve Bank of New York is not reviewable where such rate is certified to the Secretary of the Treasury and published by him under authority of this section. Armand Schmoll, Inc. v. U. S., 1949, 37 C.C.P.A., Customs, 56.

Proclaimed value is controlling in customs valuation in absence of variation of 5%. U. S. v. Hirschbach & Smith (Inc.) (1927) 15 Ct. Cust. App. 44.

Collector's order in customs case showing value of foreign coin to be as estimated by director was not subject to judicial review. J. K. Clarke v. U. S. (1930) 17 Ct. Cust. & Pat. App. 420.

5. Valuation of imported merchandise

Where the British Government established an official rate of exchange for the pound sterling applicable to exportation of certain classes of merchandise and accordingly the Federal Reserve Bank of New York, which was required by this section to certify daily exchange rates to Secretary of the Treasury to be used in determining value of goods for purposes of ad valorem tax in United States currency, certified both an "official" rate corresponding to that established by British Government and a "free rate" reflecting the actual money market, Secretary of the Treasury had no authority to proclaim the higher "official rate" with respect to importation

of woolens which were paid for with pounds purchased through the open market, but importer was entitled to have the woolens valued at the free rate. Barr v. U. S., 1945, 65 S.Ct. 522, 324 U.S. 83, 89 L.Ed. 765.

Where the British Government on June 7, 1940 published an order effective June 10, 1940 requiring that exported goods be paid for in pounds purchased at the "official rate", the collector of customs, in the conversion of English pounds to American dollars for purpose of assessment and collection of duties upon woolen goods exported from England on June 17, 1940 and received in the United States on July 3, 1940, properly used the "official" buying rate of pounds rather than the "free" buying rate, notwithstanding the certification of a "free" rate by the Federal Reserve Bank to the Secretary of the Treasury. Barr v. U. S., Cust. & Pat.App.1947, 161 F.2d 362, 35 C.C.P.A. Customs.

Liquidation of entries at rates in excess of conversion rates was not void, and importer's remedy was to protest. A. S. Rosenthal Co. v. U. S. (C. C. A. N. Y. 1928) 24 F.(2d) 351.

For the purpose of assessment and collection of duties on a shipment of hides from Brazil, the collector properly converted the currency of the invoice from Brazilian milreis to United States dollars at the rate certified by the Federal Reserve Bank of New York, and published by the Secretary of the Treasury, under authority of this section. Armand Schmoll, Inc. v. U. S., 1949, 37 C.C.P.A., Customs, 56.

10. —— Consular certificates

Judgment of Board of General Appraisers, excluding consular certificate of depreciation of foreign currencies obtained after liquidation and overruling protest against collector's liquidation without allowance is affirmed. Tong & Co. v. U. S. (1925) 13 Ct. Cust. App. 133.

11. Value of pound sterling (R.S. § 3565)

Statement, in proclamation of values of foreign monetary units by Secretary of Treasury with reference to British pound sterling, that obligation to sell gold at legal monetary par was suspended, held not to contradict statements that gold was legal standard of Great Britain and that value of pound sterling, in which merchandise imported was invoiced, was stated sum in United States money for purpose of assessing customs duties thereon. Amalgamated Textiles v. U. S. (1936) 84 F.2d 210, 24 C.C.P.A., Customs, 74.

14. Jurisdiction

New York courts did not have jurisdiction to compel the Federal Reserve Bank of New York, which is a "federal agency" exercising powers conferred by this section and performing duties imposed upon it by this section in a field which, under Constitution of United States, is within sole jurisdiction of federal government, to make a determination, as authorized and required under this section, respecting the buying rate for cable transfers. Armand Schmoll, Inc., v. Federal Reserve Bank of New York, 1941, 37 N.E.2d 225, 286 N.Y. 503, 138 A.L.R. 1187, motion denied 62 N.E.2d 392, 294 N.Y. 839, certiorari denied 62 S. Ct. 905, 315 U.S. 818, 86 L.Ed. 1215.

15. Notice of protest

Importer's notice of dissatisfaction with decision of collector because currency of invoice was wrongly converted into dollars and, because assessment of duties and taxes was illegal and void, was sufficient. U. S. v. Barr, 1944, 143 F.2d 132, 32 C.C.P.A., Customs, 16, reversed on other grounds 65 S.Ct. 522, 324 U.S. 83, 89 L.Ed. 765.

Notices required of importers are not strictly construed, and they are sufficient if they distinctly indicate the source of complaint and design to make it the foundation of a claim against the Government. Id.

§ 373. Recoinage of foreign coins

Words "gold and" were omitted from original enactment of this section.

"Jan. 30, 1934, c. 6, § 5, 48 Stat. 340" should be added to the credit.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

See section 446 of this title.

§ 375. Same; transmission for recoinage

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 376. Commemorative coins; laws applicable

Section 376, setting out existing laws applicable to coinage of certain enumerated commemorative coins, is now executed in view of section 376a of this title discontinuing coinage and issuance of commemorative coins authorized by acts prior to Mar. 1, 1939. Section was from Apr. 13, 1904, c. 1253, § 6, 33 Stat. 178; June 1, 1918, c. 91, §§ 1, 2, 40 Stat. 594; May 10, 1920, c. 176, §§ 1, 2, 41 Stat. 595; May 10, 1920, c. 177, §§ 1, 2, 41 Stat. 595; May 12, 1920, c. 182, §§ 1, 2, 41 Stat. 597; Mar. 4, 1921, c. 153, §§ 1, 2, 41 Stat. 1363; Feb. 2, 1922, c. 45, 42 Stat. 362; Jan. 24, 1923, c. 38, §§ 1-3, 42 Stat. 1172, 1173; Feb. 26, 1923, c. 113, §§ 1-3, 42 Stat. 1287; Mar. 17, 1924, c. 58, §§ 1-3, 43 Stat. 23; Jan. 14, 1925, c. 79, §§ 5, 6, 43 Stat. 749; Feb. 24, 1925, c. 302, §§ 2, 3, 4, 43 Stat. 965, 966; May 17, 1926, c. 307, § 3, 44 Stat. 560; Mar. 7, 1928, c. 135, §§ 1, 3, 45 Stat. 198; June 15, 1933, c. 82, §§ 1, 3, 48 Stat. 149.

See sections 315b and 446 of this title.

§ 376a. Prohibition against issuance of commemorative coins authorized under prior law

Subsequent to the enactment of this section no commemorative coins shall be coined or issued pursuant to any Act of Congress, authorizing the coinage and issuance of commemorative coins, enacted prior to March 1, 1939. Aug. 5, 1939, c. 442, 53 Stat. 1209.

§§ 377–388o. Commemorative coins; coinage; issuance; laws applicable

Sections 377–388o, related to coinage and issuance of certain enumerated commemorative coins. Section 376a of this title discontinued such coinage and issuance of all commemorative coins authorized by acts prior to Mar. 1, 1939. Sections were from Apr. 13, 1904, c. 1253, § 6, 33 Stat. 178; June 1, 1918, c. 91, §§ 1, 2, 40 Stat. 594; May 10, 1920, c. 176, §§ 1, 2, 41 Stat. 595; May 19, 1920, c. 177, §§ 1, 2, 41 Stat. 595; May 12, 1920, c. 182, §§ 1, 2, 41 Stat. 597; Mar. 4, 1921, c. 153, §§ 1, 2, 41 Stat. 1363; Feb. 2, 1922, c. 45, 42 Stat. 362; Jan. 24, 1923, c. 38, §§ 1–3, 42 Stat. 1172, 1173; Feb. 26, 1923, c. 113, §§ 1–3, 42 Stat. 1287; Mar. 17, 1924, c. 58, §§ 1–3, 43 Stat. 23; Jan. 14, 1925, c. 79, §§ 5, 6, 43 Stat. 749; Feb. 24, 1925, c. 302, §§ 1–4, 43 Stat. 966; Mar. 3, 1925, c. 482, § 4, 43 Stat. 1254; May 17, 1926, c. 307, § 3, 44 Stat. 560; Mar. 7, 1928, c. 135, §§ 1, 3, 45 Stat. 198; June 15, 1933, c. 82, §§ 1, 3, 48 Stat. 149; May 9, 1934, c. 265, §§ 1–4, 48 Stat. 679; May 14, 1934, c. 286, §§ 1–3, 48 Stat. 776; May 26, 1934, c. 355, §§ 1–4, 48 Stat. 807; June 21, 1934, c. 695, §§ 1–4, 48 Stat. 1200; May 2, 1935, c. 88, §§ 1–5, 49 Stat. 165 166; May 3, 1935, c. 90, §§ 1–4, 49 Stat. 174; June 5, 1935, c. 176, 49 Stat. 324; Mar. 18, 1936, c. 149, §§ 1–5, 49 Stat. 1165; Mar. 31, 1936, c. 164, §§ 1–3, 49 Stat. 1187; Apr. 13, 1936, c. 212, §§ 1–3, 49 Stat 1205; May 5, 1936, c. 300, §§ 1–3, 49 Stat 1257; May 5, 1936, c. 304, §§ 1–3, 49 Stat. 1259; May 6, 1936, c. 331, §§ 1–3, 49 Stat. 1262, 1263; May 15, 1936, c. 399, §§ 1–3, 49 Stat. 1276; May 15, 1936, c. 402, §§ 1–3, 49 Stat. 1277, 1278; May 15, 1936, c. 403, §§ 1–3, 49 Stat. 1352, 1353; May 28, 1936, c. 466, §§ 1–3, 49 Stat. 1387, 1388; June 16, 1936, c. 583, §§ 1–3, 49 Stat. 1522; June 16, 1936, c. 584, §§ 1–3, 49 Stat. 1523; June 16, 1936, c. 586, §§ 1–3, 49 Stat. 1524; June 24, 1936, c. 760, §§ 1–3, 49 Stat. 1911; June 26, 1936, c. 835, §§ 1–3, 49 Stat. 1972; June 26, 1936, c. 837, §§ 1–3, 49 Stat. 1973; June 24, 1937, c. 377, §§ 1–3, 50 Stat. 306; June 28, 1937, c. 384, §§ 1–3, 50 Stat. 322, 323.

CURRENCY

§ 401. United States notes

See sections 446 and 821 of this title.

§ 402. Limitation of amount of United States notes in circulation

Additional United States Notes. Issuance of additional United States notes was authorized by section 821 (b) (1) of this title, which was repealed by Act June 12, 1945, c. 186, § 4, 59 Stat. 238. Section 446 of this title repealed all laws inconsistent with said section 821.

Cross References. Cancellation or retirement of legal tender notes forbidden, see section 404 of this title.

§ 403. Issue of United States notes of small denominations and retirement of notes of higher denominations

Additional United States Notes. Issuance of additional United States notes was authorized by section 821 (b) (1) of this title, which was repealed by Act June 12, 1945, c. 186, § 4, 59 Stat. 238. Section 446 of this title repealed all laws inconsistent with said section 821.

Cross References. Delivery of circulating notes to any national banking association upon deposit of United States bonds with the Treasurer, see section 101 of Title 12, Banks and Banking.

§ 405. Silver certificates; issuance for silver dollars

Words "hereinafter in this chapter prescribed" have been stricken from the text and the words "of one, two, five and ten dollars" inserted in lieu thereof.

§ 405a. Same; issuance; circulation; security; legal tender; redemption; coinage of silver dollars

The Secretary of the Treasury is authorized and directed to issue silver certificates in such denominations as he may from time to time prescribe in a face amount not less than the cost of all silver purchased under the authority of section 734a of this title, and such certificates shall be placed in actual circulation. There shall be maintained in the Treasury as security for all silver certificates heretofore or hereafter issued and at the time outstanding an amount of silver in bullion and standard silver dollars of a monetary value equal to the face amount of such silver certificates. All silver certificates heretofore or hereafter issued shall be

legal tender for all debts, public and private, public charges, taxes, duties, and dues, and shall be redeemable on demand at the Treasury of the United States in standard silver dollars; and the Secretary of the Treasury is authorized to coin standard silver dollars for such redemption. (June 19, 1934, c. 674, § 5, 48 Stat. 1178.)

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

§ 405b. Gold certificates; issuance authorized

The Secretary of the Treasury is authorized to issue gold certificates in such form and in such denominations as he may determine, against any gold held by the Treasurer of the United States, except the gold fund held as a reserve for any United States notes and Treasury notes of 1890. The amount of gold certificates issued and outstanding shall at no time exceed the value, at the legal standard, of the gold so held against gold certificates. Jan. 30, 1934, c. 6, § 14 (c), 48 Stat. 344.

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

§ 406. Denominations of silver certificates

See sections 446 and 821 of this title.

§ 408. Gold reserve; redemption of United States notes and Treasury notes; reissue of redeemed notes

Words ", c. 708," should be inserted between "1890" and "26 Stat. 289" near beginning of section.

"July 14, 1890, c. 708, § 2, 26 Stat. 289" should be added to credit.

The words "exclusive of the amounts paid into said reserve fund under sections 290 and 1072 of title 12, and under section 9 of the Act of May 30, 1908, chapter 229 (Thirty-fifth Statutes, page 550)" near end of section should be omitted. The two last citations should be omitted.

"May 29, 1920, c. 214, § 1, 41 Stat. 655"; should be added to citation.

Provision for payment of obligations in gold declared against public policy, see section 463 of this title.

See sections 315b, 441 and 446 of this title.

The possession of gold coins and bullion was prohibited except under Government license by Ex.Ord.No.6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

Redemption of currency in gold forbidden, see section 408a of this title.

§ 408a. Redemption of currency in gold forbidden; exceptions

Except to the extent permitted in regulations which may be issued hereunder by the Secretary of the Treasury with the approval of the President, no currency of the United States shall be redeemed in gold: *Provided, however*, That gold certificates owned by the Federal Reserve banks shall be redeemed at such times and in such amounts as, in the judgment of the Secretary of the Treasury, are necessary to maintain the equal purchasing power of every kind of currency of the United States: *And provided further*, That the reserve for United States notes and for Treasury notes of 1890, and the security for gold certificates (including the gold certificates held in the Treasury for credits payable therein) shall be maintained in gold bullion equal to the dollar amounts required by law, and the reserve for Federal Reserve notes shall be maintained in gold certificates, or in credits payable in gold certificates maintained with the Treasurer of the United States under section 414 of Title 12.

No redemptions in gold shall be made except in gold bullion bearing the stamp of a United States mint or assay office in an amount equivalent at the time of redemption to the currency surrendered for such purpose. (Jan. 30, 1934, c. 6, § 6, 48 Stat. 340.)

Repeal of laws inconsistent with this section, see section 446 of this title.

Gold coinage discontinued and gold coins withdrawn from circulation, see section 315b of this title.

Provision for payment of obligations in gold declared against public policy, see section 463 of this title.

Transfer to United States of title to gold coin and bullion, see section 441 of this title.

§ 408b. Increase or decrease in weight of gold dollar; adjustment of reserve

In the event that the weight of the gold dollar shall at any time be reduced, the resulting increase in value of the gold held by the United States (including the gold held as security for gold certificates and as a reserve for any United States notes and for Treasury notes of 1890) shall be covered into the Treasury as a miscellaneous receipt; and, in the event that the weight of the gold dollar shall at any time be increased, the resulting decrease in value of the gold held as a reserve for any United States notes and for Treasury notes of 1890, and as security for gold certificates shall be compensated by transfers of gold bullion from the general fund, and there is hereby appropriated an amount sufficient to provide for such transfers and to cover the decrease in value of the gold in the general fund. (Jan. 30, 1934, c. 6, § 7, 48 Stat. 341.)

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

§ 409. Additional means for maintaining parity and strengthening gold reserve

The possession of gold coins and bullion was prohibited except under Government license by Ex.Ord.No.6260, eff. Aug. 28, 1933 set out in note under section 95 of Title 12, Banks and Banking.

Prohibition of provision for payment of obligations in gold and repeal of laws authorizing such obligations, see section 463 of this title.

See sections 408a, 441, 442, and 446 of this title.

§ 410. Treasury notes as national bank reserve fund

Treasury notes issued under the Act of July 14, 1890, c. 708, 26 Stat. 289, when held by any national banking association, may be counted as a part of its lawful reserve. (July 14, 1890, c. 708, § 2, 26 Stat. 289; Mar. 14, 1900, c. 41, § 5, 31 Stat. 47.)

§ 411. Cancellation of Treasury notes on coinage of silver dollars and issue of silver certificates

Redemption of currency in gold prohibited, see section 408a of this title.

See sections 446 and 821 of this title.

§ 412. Redemption of Treasury notes with silver dollars

Section has been omitted from the Code.

§ 415. Engraving and printing notes, bonds, and other securities

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 416. Machinery, materials, and employees and officers

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

2. Removal of officer appointed under this section

Director of Bureau of Engraving and Printing appointed by Secretary of the Treasury and removed by executive order without regard to civil service statute held not entitled to salary after removal. Wilmeth v. U. S. (1928) 64 Ct. Cl. 368.

§ 418. Distinctive paper for United States securities; contracts for

The Secretary of the Treasury is authorized, in his discretion subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended, to enter into a contract for the manu-

facture of distinctive paper for United States securities for a period not to exceed four years. As amended Oct. 31, 1951, c. 654, § 2(19), 65 Stat. 707.

References in Text. The Federal Property and Administrative Services Act of 1949, as amended, referred to in the text, is classified to chapter 11B of Title 5, Executive Departments and Government Officers and Employees, chapter 10 of Title 40, Public Buildings, Property, and Works, chapter 4 of Title 41, Public Printing and Documents.

1951 Amendment. Act Oct. 31, 1951 inserted the reference to applicable regulations of the Federal Property and Administrative Act of 1949, as amended.

§ 418a. Same; competitive bids and splitting of award

Hereafter, in order to foster competition in the manufacture of distinctive paper for United States currency and securities, the Secretary of the Treasury is authorized, in his discretion, to split the award for such paper between the two bidders whose prices per pound are the lowest received after advertisement. Aug. 11, 1951, c. 301, Title I, § 101, 65 Stat. 184.

§ 422. Destruction of notes by maceration

Catchline has been changed to read as above.

§ 425. State taxation

The possession of gold coins and bullion was prohibited except under Government license by Ex.Ord.No.6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

2. Exemption

This section and section 742 of this title are a clarification of congressional intent to immunize from state taxation only the interest-bearing obligations of the United States which are needed to secure credit to carry on the necessary functions of government, which intent should not be expanded or modified in any degree by the judiciary. Smith v. Davis, Ga.1944, 65 S.Ct. 157, 323 U.S. 111, 89 L.Ed. 107.

Fact that statute, California Revenue and Taxation Code § 212, granted exemption from taxation as to notes, etc., on condition that state law would be passed taxing net income indicated that the intangible property listed as exempt was income-producing property and that legislature did not intend to include money, such as Federal reserve notes and national bank notes. Beery v. Los Angeles County, Cal.App.1953, 253 P.2d 1005.

3. Same rate as money circulating

Where it did not appear that Federal reserve notes and national bank notes contained in safe deposit box were taxed differently than other moneys on hand, tax levied on such notes was not violative of this section. Beery v. Los Angeles County, Cal.App.1953, 253 P.2d 1005.

4. Discrimination

Taxation by county, city, water district and school district of Federal reserve notes and national bank notes in safe deposit box was not invalid as discriminatory and did not interfere with power of Congress to regulate value of money. Berry v. Los Angeles County, Cal.App.1953, 253 P.2d 1005.

§ 428. Gold certificates in exchange for gold bullion

See sections 315b, 446 and 405b of this title.

The possession of gold coins and bullion was prohibited except under Government license by Ex.Ord.No.6260, Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

Restrictions on holding of gold coin, gold bullion, and gold certificates, see Executive Order No. 6260, § 5, note to section 95 of Title 12, Banks and Banking.

§ 429. Deposits of gold coin; gold certificates

"May 20" in last citation should be "May 29."

See sections 315b, 463, 757a of this title.

Repeal of laws inconsistent with sections 315b, 408a, 408b, 440–446, 752, 754a, 754b, 757a, 767, 821, 822a, 822b, 824 of this title and sections 213, 411–415, 417, 467 of Title 12, Banks and Banking, see section 446 of this title.

Restrictions on holding of gold coin, gold bullion and gold certificates, see Ex.Ord.No.6260, § 5, set out in note to section 95 of Title 12, Banks and Banking.

§ 430. Same; receiving by superintendents of mints or assayers of assay offices

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Cross References. See notes under sections 428 and 429 of this title.

GOLD COIN AND GOLD BULLION

§ 440. Short title

The short title of sections 315b, 405b, 408a, 408b, 440–446, 752, 754a, 754b, 767, 821, 822a, and 824 of this title and sections 213, 411–415, 417, 467 of Title 12 shall be the "Gold Reserve Act of 1934." (Jan. 30, 1934, c. 6, § 1, 48 Stat. 337.)

§ 441. Title to gold coin and bullion transferred to United States; payment therefor

On January 30, 1934, all right, title, and interest, and every claim of the Board of Governors of the Federal Reserve System, of every Federal Reserve bank, and of every Federal Reserve agent, in and to any and all gold coin and gold bullion shall pass to and are hereby vested in the United States; and in payment therefor credits in equivalent amounts in dollars are hereby established in the Treasury in the accounts authorized under section 467 of Title 12. Balances in such accounts shall be payable in gold certificates, which shall be in such form and in such denominations as the Secretary of the Treasury may determine. All gold so transferred, not in the possession of the United States, shall be held in custody for the United States and delivered upon the order of the Secretary of the Treasury; and the Board of Governors of the Federal Reserve System, the Federal Reserve banks, and the Federal Reserve agents shall give such instructions and shall take such action as may be necessary to assure that such gold shall be so held and delivered. (Jan. 30, 1934, c. 6, § 2(a), 48 Stat. 337; Aug. 23, 1935, c. 614, § 203 (a), 49 Stat. 704.)

Act of Aug. 23, 1935, c. 614, § 203 (a), 49 Stat. 704, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

1. Validity

This section is held to be constitutional. (1934) 37 Op.Atty.Gen. 403.

2. Parties

In suit by foreign owner, wishing to export gold, to compel delivery by bailee which had been directed by Treasury Department to deliver to federal reserve bank, United States was not an indispensable party because bailee and bank would be subject to penalty if they disobeyed requisitions of Secretary of Treasury. Uebersee Finanz-Korporation Aktien Gesellschaft v. Rosen (C.C.A.N.Y. 1936) 83 F.(2d) 225, certiorari denied 56 S.Ct. 946, 298 U.S. 679, 80 L.Ed. 1400.

3. Jurisdiction

If foreign owner of gold which had been denied permission to export by Treasury Department had right to export gold, equity court would properly assume jurisdiction of suit to compel delivery to owner by bailee which had been directed by Treasury Department to deliver to federal reserve bank, since replevin would be inadequate under circumstances. Uebersee Finanz-Korporation Aktien Gesellschaft v. Rosen (C.C.A. N.Y.1936) 83 F.(2d) 225, certiorari denied 56 S.Ct. 946, 298 U.S. 679, 80 L.Ed. 1400.

A California superior court had jurisdiction to quiet title to a United States Mint receipt for plaintiff's gold coins deposited by defendants, notwithstanding that this section vested title in gold coins in the United States, where a credit was required to be given therefor in other legal tender. Lilley v. Leggett, 1943, 142 P.2d 57, 61 Cal.App.2d 25.

4. Fair Labor Standards Act, relation to

A corporation operating a mill for reduction of gold and silver bearing ore to the form of bullion for transfer to a United States mint and subsequent transfer thereto was not engaged in "interstate commerce" within Fair Labor Standards Act, section 201 et seq. of Title 29. Fox v. Summit King Mines, D.C.Nev.1943, 48 F.Supp. 952, affirmed 143 F.2d 926.

Where company engaged in mining gold in South Carolina is required under this section to send its gold where the government directs, company is not "engaged in interstate commerce" within the Fair Labor Standards Act, section 201 et seq. of Title 29, when transferring gold from South Carolina to Philadelphia mint pursuant to government orders. Holland v. Haile Gold Mines, D.C.S.C.1942, 44 F. Supp. 641.

Under this section and regulations issued pursuant thereto requiring producers to sell all gold to the government at a price fixed by the government, there is no competition and no relation between wages paid and interstate commerce, and hence wages paid by a producer are not within the scope of federal regulation under the commerce power, U.S.C.A.Const. Art. 1, § 8, cl. 3, and are not subject to section 208 of Title 29. Id.

The production of gold in South Carolina is of itself an "intrastate activity" which does not constitute the "production of goods for interstate commerce" within section 201 et seq. of Title 29, even if the government's acquisition of gold forwarded from South Carolina to Philadelphia mint is a commercial transaction, where transfer is pursuant to government orders. Id.

Where transfer of gold from South Carolina to Philadelphia mint is pursuant to government orders, the transfer is an "administrative act" of the government rather than a "shipment in commerce" by company. Id.

§ 442. Regulations for the acquisition and use of gold; exemption of gold held in Philippines or beyond continental United States

The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of sections 315b, 405b, 408a, 408b, 440–446, 752, 754a, 754b, 767, 821, 822a, 824 of this title and sections 213, 411–415, 417, and 467 of Title 12. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in the Philippine Islands or other places beyond the limits of the continental United States. (Jan. 30, 1934, c. 6, § 3, 48 Stat. 340.)

Repeals. All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

Approval of the President. Power of the Secretary of the Treasury to perform, without the approval, ratification, or other action of the President, the functions vested in him by this section, see Ex.Ord.No.10289, September 17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

Philippine Independence. Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, issued pursuant to section 1240 of Title 48, recognized the independence of the Philippines as of July 4, 1946. For text of Proc. No. 2695, see note under section 1240 of Title 48, Territories and Insular Possessions.

½. Validity

This act is not an unlawful attempt to delegate legislative power to Secretary of Treasury and is constitutional. U. S. v. O'Toole, D.C.R.I.1951, 101 F.Supp. 123.

This act held not invalid in entirety, on ground that provision, authorizing Secretary of Treasury to except from prohibitions of act gold held for such other purposes as in his judgment were not inconsistent with purposes of act, was invalid delegation of legislative power, in view of section 445 of this title. Uebersee Finanz-Korporation Aktien Gesellschaft v. Rosen (C.C.A.N.Y.1936) 83 F.(2d) 225, certiorari denied 56 S.Ct. 946, 298 U.S. 679, 80 L.Ed. 1400.

This section held a lawful delegation of legislative power. Id.

1. In general

Bill by owner of gold coin to compel delivery by bailee which had been directed by Secretary of Treasury to deliver to Federal Reserve Bank held not maintainable. Uebersee Finanz-Korporation Aktien Gesellschaft v. Rosen (C.C.A.N.Y. 1936) 83 F.(2d) 225, certiorari denied 56 S.Ct. 946, 298 U.S. 679, 80 L.Ed. 1400.

Foreign owner held precluded from exporting or hoarding gold coins under this Act. Id.

Government held not entitled to forfeiture of unmelted scrap gold lawfully held by one licensed to acquire and hold such gold. U. S. v. 64.02 Troy Ounces, etc., Scrap Gold (D. C. N. Y. 1934) 8 F. Supp. 841.

2. Prosecutions

In prosecution for conspiracy to defraud United States by agreement to sell gold to mint by falsely concealing in required affidavit true origin of gold, where government witness testified that defendant signed with fictitious names source slips required by California law for use in purchasing gold, exclusion of evidence showing custom permitted by state whereby persons other than actual producers signed source slips, offered to explain defendant's conduct in signing other people's names to slips, was reversible error, especially where court improperly indicated that custom violated federal law. Hills v. U. S., C.C.A.Cal. 1938, 97 F.2d 710.

In prosecution for conspiracy to defraud United States by agreement to sell gold to mint by falsely concealing in required affidavit true origin of gold, where government relied upon circumstantial evidence to show that supposed producers named in affidavit were nonexistent, defendants were entitled to present all evidence tending to relieve them of implication of willful deception, or to establish their good faith. Id.

That section 440 et seq. of this title, may have unlawfully attempted to delegate legislative power to Secretary of Treasury was no defense to prosecution for conspiring to defraud United States by an agreement to effect sale of gold to United States mint by falsely concealing in required affidavit true origin of gold, since Congress was entitled to protect government against swindlers, regardless of constitutionality of operation being conducted by government. Id.

3. Indictment or information

An indictment charging defendant and others with conspiring to acquire and transport gold without a license issued by Secretary of Treasury, which failed to charge a conspiracy to violate Gold Reserve Act of 1934, this section and section 443 of this title, or any regulation thereunder, could not be upheld on ground that it charged a violation of Trading with the Enemy Act, section 95a of Title 12, Banks and Banking, and Executive Order issued thereunder, since the Trading with the Enemy Act and Executive Order issued thereunder relate to gold coin, gold bullion and gold certificates, and not to gold, as such. Fuller v. U. S., C.C.A.Cal.1940, 114 F.2d 698.

An indictment charging defendant and others with conspiring to acquire and transport gold without a license issued by Secretary of Treasury, which did not state facts from which it could be inferred that acquisition or transportation which it charged defendant and others conspired to effect was one for which a license was required, failed to charge a conspiracy to violate this section or sec-

tion 443 of this title, or any regulation thereunder. Id.

4. National Labor Relations Act, relation to

Where petitioner in addition to producing gold bullion which it ships from South Dakota and sells to the United States mint at Denver, Colorado, sells and ships slag to a smelting company in Montana, and nearly half of materials and supplies purchased annually are transported to petitioner's plant from outside the state, the National Labor Relations Board properly considered all of those facts together and concluded that petitioner's operations "affected commerce" within the National Labor Relations Act, section 152(6) of Title 29. Canyon Corporation v. National Labor Relations Board, C.C.A.1942, 128 F.2d 953.

The production and shipment of gold bullion by a mine and refinery in one state for purpose of selling it to a United States mint in another state is "commerce" within the National Labor Relations Act, section 152(6) of Title 29, even though the United States may be the only customer to which bullion can legally be sold. Id.

5. Fair Labor Standards Act, relation to

Sections 440–446 of this title do not make gold noncommercial in character, but even if they did, a mining company that produced gold ore, reduced it to bullion which was transported by mail to another state and sold to the United States Mint would be subject to Fair Labor Standards Act, section 201 et seq. of Title 29. Fox v. Summit King Mines, C.C.A.Nev.1944, 143 F.2d 926.

The term "goods", as used in Fair Labor Standards Act, section 203 of Title 29, regulating wages and hours of employees engaged in producing goods for commerce, includes gold mined for the government and shipped to a mint in another state, since, under this section, gold may be used for industrial, professional, and artistic purposes. Walling v. Haile Gold Mines, C.C.A.S.C.1943, 136 F.2d 102.

§ 443. Acquisition and use of gold in violation of law; penalties

Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of sections 315b, 405b, 408a, 408b, 440–446, 752, 754a, 754b, 767, 821, 822a, 824 of this title and sections 213, 411–415, 417, and 467 of Title 12 or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of said sections or of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred. (Jan. 30, 1934, c. 6, § 4, 48 Stat. 340.)

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

¼. Construction with other laws

The importation of duty-free gold bullion with requisite intent constitutes violation of sections 1593 and 483 of Title 19, as against contention that exclusive penalty for any unlawful dealing with gold, including importation, is under this section. U. S. v. Kushner, C. C.A.N.Y.1943, 135 F.2d 668, certiorari denied 63 S.Ct. 1449, 320 U.S. 212, 87 L.Ed. 1850, rehearing denied 64 S.Ct. 32, 320 U. S. 808, 88 L.Ed. 488.

This section regarding importation of gold in disregard of regulations and licenses of Secretary of Treasury issued with view to stabilizing domestic monetary economy is not inconsistent with sections of Tariff Act, 1593 and 483 of Title 19, directed at impairment of efficiency of customs administration by failure to declare or to invoice any imported gold, and this section does not repeal sections 1593 and 483 of Title 19, as applied to gold, since each stands for a separate function. Id.

½. Validity

This section held not invalid as ex post facto if applied to gold for which application for license to export was denied before passage of act, since forfeitures were aimed at persons who continued to hold or who exported gold after passage of act. Uebersee Finanz-Korporation Aktien Gesellschaft v. Rosen (C.C.A.N.Y. 1936) 83 F.(2d) 225, certiorari denied 56 S.Ct. 946, 298 U.S. 679, 80 L.Ed. 1400.

1. In general

Under Gold Reserve Act of 1934, private individual had no right to hold or transport gold coins in August, 1934, but was required to deliver them to Federal Reserve Bank for Account of United States. U. S. v. 98 $20 U. S. Gold Coins, D.C.Pa.1937, 20 F.Supp. 354.

That owner of gold coins intended to deliver gold to Federal Reserve Bank in accordance with law, but fearing incrimination, delayed while seeking safe and legal method of delivery did not excuse owner's withholding and transporting gold, and hence such gold would be condemned. Id.

Government held entitled to forfeiture of melted scrap gold held by one licensed to acquire and hold unmelted scrap gold, under licensee's testimony that gold was melted in unauthorized experimental work. U. S. v. 64.02 Troy Ounces, etc., Scrap Gold (D. C. N. Y. 1934) 8 F. Supp. 841.

1½. Repeals

The Trading with the Enemy Act, as amended by Act of March 9, 1933, c. 1, § 2, incorporated in section 95a of Title 12, Banks and Banking, authorizing the President to regulate the hoarding, melting or earmarkings of gold coin or bullion, and section 4 of Executive Order No. 6260 as amended by Order No. 6556, set forth in note to section 95 of Title 12, Banks and Banking, prohibiting the acquisition of gold coin except under license, but permitting collectors of rare coin to acquire from one another gold coin having recognized special value to collectors, were not amended or repealed by the Gold Reserve Act, this section and sections 441 and 442 of this title, and regulation of Secretary of Treasury thereunder providing that gold coin of recognized special value to collectors may be acquired without necessity of holding a license therefor. Farber v. U. S., C.C.A.

Cal.1940, 114 F.2d 5, certiorari denied 61 S.Ct. 173, 311 U.S. 706, 85 L.Ed. 458.

The passage of this section did not repeal penalty provision of Trading with the Enemy Act, as amended by Act of March 9, 1933, c. 1 § 2, incorporated in section 95a of Title 12, Banks and Banking. Id.

2. Intent

The Gold Reserve Act of 1934, providing for forfeiture of improperly held gold, is highly penal and hence government must show intent to violate the act. U. S. v. 98 $20 U. S. Gold Coins, D.C.Pa.1937, 20 F.Supp. 354.

3. Forfeiture to United States

In action by renter of safety box against depositary bank for loss of gold coins and currency, where renter had made no report to federal government concerning gold and had received no permission from government to hold gold coins, evidence pertaining to gold coins was properly excluded, since title and interest in and to the gold coins had been forfeited to the United States. Schmidt v. Twin City State Bank, 1940, 100 P.2d 652, 151 Kan. 667.

4. False claims act, offense distinguished

This section deals with an offense entirely distinct from that punishable under section 80 of Title 18, and does not supersede that section on ground that it provides an exclusive penalty for violation of its terms. Fuller v. U. S., C.C.A.Cal. 1940, 110 F.2d 815, certiorari denied 61 S. Ct. 29, 311 U.S. 669, 85 L.Ed. 430.

5. Indictment or information

An indictment charging defendant and others with conspiring to acquire and transport gold without a license issued by Secretary of Treasury, which failed to charge a conspiracy to violate Gold Reserve Act of 1934, this section and section 442 of this title, or any regulation thereunder, could not be upheld on ground that it charged a violation of Trading with the Enemy Act, section 95a of Title 12, Banks and Banking, and Executive Order issued thereunder, since the Trading with the Enemy Act and Executive Order issued thereunder relate to gold coin, gold bullion and gold certificates, and not to gold, as such. Fuller v. U. S., C.C.A.Cal.1940, 114 F.2d 698.

An indictment charging defendant and others with conspiring to acquire and transport gold without a license issued by Secretary of Treasury, which did not state facts from which it could be inferred that acquisition or transportation which it charged defendant and others conspired to effect was one for which a license was required, failed to charge a conspiracy to violate this section or section 442 of this title, or any regulation thereunder. Id.

Indictment charging defendants with conspiracy to violate section 440 et seq. of this title, and rules and regulations promulgated pursuant thereto was not subject to objection that it charged a conspiracy to violate section 440 et seq. of this title, and rules and regulations issued pursuant thereto for which no punishment was provided by law. U. S. v. O'Toole, D.C.R.I.1952, 101 F.Supp. 123.

§ 444. Definitions

As used in sections 315b, 405b, 408a, 408b, 440–446, 752, 754a, 754b, 767, 821, 822a, and 824 of this title and sections 213, 411–415, 417, 467 of Title 12, the term "United States" means the Government of the United States; the term "the continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "currency of the United States" means currency which is legal tender in the United States, and includes United States notes, Treasury notes of 1890, gold certificates, silver certificates, Federal Reserve notes, and circulating notes of Federal Reserve banks and national banking associations; and the term "person" means any individual, partnership, association, or corporation, including the Board of Governors of the Federal Reserve System, Federal Reserve banks, and Federal Reserve agents. Wherever reference is made in such sections to equivalents as between dollars or currency of the United States and gold, one dollar or one dollar face amount of any currency of the United States equals such a number of grains of gold, nine tenths fine, as, at the time referred to, are contained in the standard unit of value, that is, so long as the President shall not have altered by proclamation the weight of the gold dollar under the authority of section 821 of this title, twenty-five and eight tenths grains of gold, nine tenths fine, and thereafter such a number of grains of gold, nine tenths fine, as the President shall have fixed under such authority. (Jan. 30, 1934, c. 6, § 15, 48 Stat. 344; Aug. 23, 1935, c. 614, § 203 (a), 49 Stat. 704.)

Act of Aug. 23, 1935, c. 614, § 203 (a), 49 Stat. 704, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

Authority to President to fix by proclamation the weight of the gold dollar, in grains nine-tenths fine, see section 821 (b) (2) of this title.

Weight of gold dollar reduced to 15 5/21 grains nine-tenths fine, see Proclamation No. 2072 set out as note to section 821 of this title.

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

§ 445. Right to amend or repeal reserved; separability clause

The right to alter, amend, or repeal sections 315b, 405b, 408a, 408b, 440–446, 752, 754a, 754b, 767, 821, 822a, and 824 of this title and sec-

tions 213, 411–415, 417, 467 of Title 12, is hereby expressly reserved. If any provision of said sections, or the application thereof to any person or circumstances, is held invalid, the remainder of said sections, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Jan. 30, 1934, c. 6, § 16, 48 Stat. 344.)

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

§ 446. Laws repealed

All Acts and parts of Acts inconsistent with any of the provisions of sections 315b, 405b, 408a, 408b, 440–446, 752, 754a, 754b, 767, 821, 822a, and 824 of this title and sections 213, 411–415, 417, 467 of Title 12 are hereby repealed. Jan. 30, 1934, c. 6, § 17, 48 Stat. 344.

1. Construction and application

The Trading with the Enemy Act, as amended by Act of March 9, 1933, c. 1, § 2, incorporated in section 95a of Title 12, Banks and Banking, authorizing the President to regulate the hoarding, melting or earmarkings of gold coin or bullion, and section 4 of Executive Order No. 6260 as amended by Order No. 6556, set forth in note to section 95 of Title 12, Banks and Banking, prohibiting the acquisition of gold coin except under license, but permitting collectors of rare coin to acquire from one another gold coin having recognized special value to collectors, were not amended or repealed by the Gold Reserve Act, sections 441–443 of this title, and regulation of Secretary of Treasury thereunder providing that gold coin of recognized special value to collectors may be acquired without necessity of holding a license therefor. Farber v. U. S., C.C.A.Cal.1940, 114 F.2d 5, certiorari denied 61 S.Ct. 173, 311 U.S. 706, 85 L.Ed. 458.

The passage of the Gold Reserve Act, section 443 of this title, providing that any gold withheld in violation of the act might be condemned and that any person failing to comply with the act should be subject to penalty equal to twice the value of gold in respect to which such failure occurred, did not repeal penalty provision of Trading with the Enemy Act, as amended by Act of March 9, 1933, c. 1, § 2, incorporated in section 95a of Title 12, Banks and Banking. Id.

SILVER PURCHASE

§ 448. Short title

The short titles of sections 311a, 316a, 316b, 405a, 448–448e, 734a, and 734b of this title shall be the "Silver Purchase Act of 1934." (June 19, 1934, c. 674, § 1, 48 Stat. 1178.)

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

§ 448a. Rules and regulations

The Secretary of the Treasury is hereby authorized to issue, with the approval of the President, such rules and regulations as the Secretary of the Treasury may deem necessary or proper to carry out the purposes of sections 311a, 316a, 316b, 405a, 448–448e, 734a, and 734b of this title, or of any order issued hereunder. (June 19, 1934, c. 674, § 9, 48 Stat. 1181.)

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

Approval of the President. Power of the Secretary of the Treasury to perform, without the approval, ratification, or other action of the President, the functions vested in him by this section, see Ex.Ord.No.10289, September 17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

§ 448b. Definitions

As used in sections 311a, 316a, 316b, 405a, 448–448e, 734a, and 734b of this title—

The term "person" means an individual, partnership, association, or corporation;

The term "the continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska;

The term "monetary value" means a value calculated on the basis of $1 for an amount of silver or gold equal to the amount at the time contained in the standard silver dollar and the gold dollar, respectively;

The term "stocks of silver" means the total amount of silver at the time owned by the United States (whether or not held as security for outstanding currency of the United States) and of silver contained in coins of the United States at the time outstanding;

The term "stocks of gold" means the total amount of gold at the time owned by the United States, whether or not held as a reserve or as security for any outstanding currency of the United States. (June 19, 1934, c. 674, § 10, 48 Stat. 1181.)

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

§ 448c. Appropriation

There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $500,000, which shall be available for expenditure under the direction of the President and in his discretion, for any purpose in connection with the carrying out of sections 311a, 316a, 316b, 405a, 448–448e, 734a, and 734b of this title; and there are hereby authorized to be appropriated annually such additional sums as may be necessary for such purposes. (June 19, 1934, c. 674, § 11, 48 Stat. 1181.)

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

§ 448d. Right to amend or repeal; separability clause

The right to alter, amend, or repeal sections 311a, 316a, 316b, 405a, 448–448e, 734a, and 734b of this title is hereby expressly reserved. If any provision of said sections, or the application thereof to any person or circumstances, is held invalid, the remainder of said sections, and the application of such provision to other persons or circumstances, shall not be affected thereby. (June 19, 1934, c. 674, § 12, 48 Stat. 1181.)

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

§ 448e. Laws repealed

All Acts and parts of Acts inconsistent with any of the provisions of sections 311a, 316a, 316b, 405a, 448–448e, 734a, and 734b of this title are hereby repealed, but the authority conferred in said sections upon the President and the Secretary of the Treasury is declared to be supplemental to the authority heretofore conferred. (June 19, 1934, c. 674, § 13, 48 Stat. 1181.)

CHAPTER 9.—LEGAL TENDER

Sec.
462. Coins and currencies [New].
463. Provision for payment of obligations in gold prohibited; uniformity in value of coins and currencies [New].

§ 451. United States gold certificates

This section is affected by section 462 of this title which makes all coins and currencies legal tender. See also section 821 of this title.

§ 452. United States notes

All coins and currencies of the United States, including Federal Reserve Notes and circulating notes of Federal Reserve Banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

1. Validity and scope of statute

Necessity and sufficiency of showing in indictment for larceny that money stolen is legal. State v. Cooke (1929) 278 P. 936, 130 Or. 552.

§ 453. Treasury notes

Demand Treasury notes authorized by the Act of July 17, 1861, chapter 5, 12 Stat. 259, and the Act of February 12, 1862, chapter 20, 12 Stat. 338, shall be lawful money and a legal tender in like manner as United States notes. Treasury notes issued under the Act of July 14, 1890, chapter 708, 26 Stat. 289, shall be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated in the contract, and shall be receivable for customs, taxes, and all public dues. R.S. § 3589; July 14, 1890, c. 708, § 2, 26 Stat. 289.

All coins and currencies of the United States, including Federal Reserve Notes and circulating notes of Federal Reserve Banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see section 462 of this title.

§ 454. Interest-bearing notes

Treasury notes issued under the authority of the Acts of March 3, 1863, chapter 73, 12 Stat. 710, and June 30, 1864, chapter 172, 13 Stat. 218–222, shall be legal tender to the same extent as United States notes, for their face value, excluding interest: *Provided*, That Treasury notes issued under the Act June 30, 1864, c. 172, 13 Stat. 218–222, shall not be a legal tender in payment or redemption of any notes issued by any bank, banking association, or banker, calculated and intended to circulate as money. R.S. § 3590.

All coins and currencies of the United States, including Federal Reserve Notes and circulating notes of Federal Reserve Banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see section 462 of this title.

§ 455. Legal-tender quality of money not affected by certain sections

Nothing contained in sections 146, 313, 314, 320, 406, 408, 410, 411, 429, and 751 of this title, and sections 51, 101, 177, 178, and 542 of Title 12 shall be construed to affect the legal-tender quality as now provided by law of the silver dollar, or of any other money coined or issued by the United States. Mar. 14, 1900, c. 41, § 3, 31 Stat. 46.

All coins and currencies of the United States to be legal tender for all debts, see sections 462 and 821 of this title.

§ 456. Foreign coins

All coins and currencies of the United States to be legal tender for all debts, see sections 462 and 821 of this title.

§ 457. Gold coins of United States

Acquisition and use of gold in violation of law to subject the gold to forfeiture and subject person to penalty equal to twice the value of the gold, see section 443 of this title.

All coins and currencies of the United States as legal tender, see sections 462 and 821 of this title.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions requiring obligations to be payable in gold declared against public policy, see section 463 of this title.

§ 458. Standard silver dollars; paid in silver

"c. 20, 20 Stat. 25, 26" should be inserted after "1878" in text.

Obligations payable in any coin or currency which at the time is a legal tender notwithstanding a provision for payment in a particular kind of coin or currency, see section 463 of this title.

All coins and currencies of the United States, including Federal Reserve Notes and circulating notes of Federal Reserve Banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 463 of this title.

§§ 459, 460.

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 461. Commemorative coins

Section 461, making certain enumerated commemorative coins legal tender, is executed in view of section 376a of this title discontinuing coinage and issuance

of commemorative coins under acts enacted prior to March 1, 1939.

Section was from Acts Apr. 13, 1904, c. 1253, § 6, 33 Stat. 178; June 1, 1918, c. 91, § 1, 40 Stat. 594; May 10, 1920, c. 176, § 1, 41 Stat. 595; May 10, 1920, c. 177, § 1, 41 Stat. 595; May 12, 1920, c. 182, § 1, 41 Stat. 597; Mar. 4, 1921, c. 153, § 1, 41 Stat. 1363; Feb. 2, 1922, c. 45, 42 Stat. 362; Jan. 24, 1923, c. 38, § 1, 42 Stat. 1172; Feb. 26, 1923, c. 113, § 1, 42 Stat. 1287; Mar. 17, 1924, c. 58, § 1, 43 Stat. 23; Jan. 14, 1925, c. 79, § 5, 43 Stat. 749; Feb. 24, 1925, c. 302, §§ 1–3, 43 Stat. 965, 966; Mar. 3, 1925, c. 482, § 4, 43 Stat. 1254; May 17, 1926, c. 307, § 1, 44 Stat. 559; Mar. 7, 1928, c. 135, § 1, 45 Stat. 198; June 15, 1933, c. 82, § 1, 48 Stat. 149; May 9, 1934, c. 265, §§ 1–4, 48 Stat. 679; May 14, 1934, c. 286, §§ 1–3, 48 Stat. 776; May 26, 1934, c. 355, §§ 1–4, 48 Stat. 807; June 21, 1934, c. 695, §§ 1–4, 48 Stat. 1200; May 2, 1935, c. 88, §§ 1–5, 49 Stat. 165, 166; May 3, 1935, c. 90, §§ 1–4, 49 Stat. 174; June 5, 1935, c. 176, 49 Stat. 324; Mar. 18, 1936, c. 149, §§ 1–5, 49 Stat. 1165; Mar. 20, 1936, c. 164, §§ 1–3, 49 Stat. 1187; Apr. 13, 1936, c. 212, §§ 1–3, 49 Stat. 1205; May 5, 1936, c. 300, §§ 1–3, 49 Stat. 1257; May 5, 1936, c. 304, §§ 1–3, 49 Stat. 1259; May 6, 1936, c. 331, §§ 1–3, 49 Stat. 1262, 1263; May 15, 1936, c. 399, §§ 1–3, 49 Stat. 1276; May 15, 1936, c. 402, §§ 1–3, 49 Stat. 1277, 1278; May 15, 1936, c. 406, §§ 1–3, 49 Stat. 1352, 1353; May 28, 1936, c. 466, §§ 1–3, 49 Stat. 1387, 1388; June 16, 1936, c. 583, §§ 1–3, 49 Stat. 1522; June 16, 1936, c. 584, §§ 1–3, 49 Stat. 1523; June 16, 1936, c. 586, §§ 1–3, 49 Stat. 1524; June 24, 1936, c. 760, §§ 1–3, 49 Stat. 1911; June 26, 1936, c. 835, §§ 1–3, 49 Stat. 1972; June 26, 1936, c. 837, §§ 1–3, 49 Stat. 1973; June 24, 1937, c. 377, §§ 1–3, 50 Stat. 306; June 28, 1937, c. 384, §§ 1–3, 50 Stat. 322, 323.

See sections 315b, 446, and 462 of this title.

§ 462. Coins and currencies. All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight. (May 12, 1933, c. 25, Title III, § 43 (b) (1), 48 Stat. 52, as amended June 5, 1933, c. 48, § 2, 48 Stat. 113.)

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

½. Constitutionality

This section being within the constitutional powers of Congress, did not contravene the Fifth Amendment. Guaranty Trust Co. of New York v. Henwood, Mo. 1939, 59 S.Ct. 847, 307 U.S. 247, 83 L.Ed. 1266; Chemical Bank & Trust Co. v. Henwood, Mo.1939, 59 S.Ct. 847, 307 U.S. 247, 83 L.Ed. 1266, 98 F.2d 179.

This section is valid. Bakewell v. U. S., D.C.Mo.1939, 28 F.Supp. 504, affirmed 110 F.2d 564, certiorari denied 60 S.Ct. 1081, 310 U.S. 638, 84 L.Ed. 1407.

1. In general

Federal reserve notes need not be treated by state as chattels in determining situs thereof for purpose of taxation [concurring opinion]. Pearson v. McGraw, Or.1939, 60 S.Ct. 211, 308 U.S. 313, 84 L.Ed. 293.

The payment to the holder of a Fourth Liberty Loan 4¼% bond of an amount in legal tender currency in excess of the principal amount thereof would constitute an unjustified enrichment. Bakewell v. U. S., D.C.Mo.1939, 28 F.Supp. 504, affirmed 110 F.2d 564, certiorari denied 60 S.Ct. 1081, 310 U.S. 638, 84 L.Ed. 1407.

The holder of a Fourth Liberty Loan 4¼% bond payable in United States gold coin "of the present standard of value" is not entitled to receive from the United States an amount in legal tender currency in excess of the face amount of the bond. Id.

Sale by trustee named in deed of trust which provided for payment in gold coin of the United States is not void on ground that provision was against public policy after congressional resolution authorized discharge of obligation to pay gold coin by payment of any legal tender, since effect of resolution was to strike provisions for payment in gold. Pacific States Savings & Loan Co. v O'Neill (1936) 61 P.(2d) 1160, 7 Cal.(2d) 596.

Agreement of mortgagor and guarantor, in consideration of extension, to pay difference between gold and currency values or to increase mortgage to its gold value in terms of currency, held invalidated by subsequent federal statute providing that it is against public policy to enforce contract for the payment of money in an amount measured by the value of gold dollars. Levy v. Asbestos (Sup. 1934) 273 N. Y. S. 911, 153 Misc. 125.

All currency or current funds lawfully in circulation being legal tender under this section, fact that bank time deposit certificate, issued after effective date of this section, was made payable in current funds, did not prevent it from being negotiable. Reese v. First Nat. Bank of Bellville, Tex.Civ.App.1946, 196 S.W.2d 48, 171 A.L.R. 516, ref. N. R. E.

2. Power of Congress over currency

Whether it was wise and expedient to make the national currency legal tender money for all purposes was, under Constitution art. 1, § 8 cl. 5, a determination to be made by Congress. Guaranty Trust Co. of New York v. Henwood, Mo. 1939, 59 S.Ct. 847, 307 U.S. 247, 83 L.Ed. 1266; Chemical Bank & Trust Co. v. Henwood, Mo.1939, 59 S.Ct. 847, 307 U.S. 247, 83 L.Ed. 1266.

Under constitutional power of Congress to coin money and regulate value thereof, and its broad comprehensive authority over subjects of revenue, finance and currency derived from other constitutional provisions, Congress was authorized to establish, regulate and control the national currency and to make that currency legal tender money for all purposes, including payment of domestic dollar obligations with options for payment in foreign currencies. Id.

3. Legal tender for debts

Federal reserve notes and national bank notes may be used to pay an obligation evidenced by usual form of promissory note. Beery v. Los Angeles County, Cal. App.1953, 253 P.2d 1005.

§ 463. Provision for payment of obligations in gold prohibited; uniformity in value of coins and currencies

(a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this section, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations. (June 5, 1933, c. 48, § 1, 48 Stat. 113.)

½. Validity

This section does not violate Constitution as applied to water power lease providing for payment as rent of quantity of gold equal in amount to specified number of dollars of gold coin of specified standard of weight and fineness, or equivalent in United States currency, on theory that such covenants are so rare that their suppression is not required for protection of monetary system and is arbitrary, or on theory that it makes the value of the dollar fluctuate with variation in the weight and fineness of monetary standard, and thus defeats the expectation of the parties. Holyoke Water Power Co. v. American Writing Paper Co. (Mass.1937) 57 S.Ct. 485, 300 U.S. 324, 81 L.Ed. 678.

The extensive and exclusive power of Congress to regulate the currency, if exercised in good faith in the carrying out of a monetary policy transcends private contract, and accordingly this section, as applied to private obligations, is valid. Norman v. Baltimore & O. R. Co. (1935) 55 S. Ct. 407, 294 U. S. 240, 79 L. Ed. 885, 95 A.L.R. 1352; U. S. v. Bankers' Trust Co., N.Y.1935, 55 S.Ct. 407, 294 U.S. 240, 79 L.Ed. 885, 95 A.L.R. 1352.

Apparently a different view was taken as to the contract of the government embodied in a United States gold note. Nortz v. U. S. (1935) 55 S. Ct. 428, 294 U. S. 317, 79 L. Ed. 907, 95 A. L. R. 1346. But in that case it was held further that to recover for failure to redeem such notes in gold actual damage must be shown, and that such damage was not shown in view of the fact that had gold been paid in redemption the payee would have been required by existing laws to turn it in to the Treasury in exchange for currency.

As to the government contract embodied in a Liberty Loan gold bond, it was held that this section was invalid. Perry v. U. S. (1935) 55 S. Ct. 432, 294 U. S. 330, 79 L. Ed. 912, 95 A. L. R. 1335. But under the ruling in Nortz v. U. S. (1935) 55 S. Ct. 428, 294 U. S. 317, 79 L. Ed. 907, 95 A. L. R. 1346, it was held that no damage was sustained by the refusal to pay in gold and that therefore, no recovery other than the amount of the bond in currency could be had.

This section was proper exercise of Congress' power to regulate value of money as applied to long-term lease providing for rent payments in gold bullion, with option in lessors to require payment in United States currency, where parties intended to use gold as value stabilizer, not commodity. Emery Bird Thayer Dry Goods Co. v. Williams, C.C.A.Mo.1939, 107 F.2d 965, certiorari denied 60 S.Ct. 468, 309 U.S. 655, 84 L.Ed. 1004.

Federal law invalidating gold clauses in existing obligations held not unconstitutional as infringing power reserved to states. Smith v. Bukofzer, 1935, 180 S.E. 358, 180 Ga. 585.

Federal law invalidating gold clauses in existing obligations held not unconstitutional as denying due process. Id.

Federal law invalidating gold clauses in existing obligations held not unconstitutional as exercising power not delegated to Congress. Id.

¾. Construction

The word "payable" has no single definite meaning in this section, but must be sought in the context of the resolution, and if that does not clearly determine the matter, in such aids to construction as are permissible. Guaranty Trust Co. of New York v. Henwood, C. C.A.Mo.1938, 98 F.2d 160, affirmed 59 S.Ct. 847, 307 U.S. 247, 83 L.Ed. 1266.

This section is ambiguous as to whether the obligation must be payable only in United States gold or United States money, or as to whether payment in multiple currencies, including United States gold, was included, and was subject to construction in that respect. Id.

1. In general

The obligation to pay contained in bonds payable in money of the United States, or in optional fixed amounts of foreign currencies, was an "obligation payable in money of the United States" within this section. Bethlehem Steel Co. v. Zurich General Accident & Liability Ins. Co., N.Y.1939, 59 S.Ct. 856, 307 U.S. 265, 83 L.Ed. 1280, rehearing denied 60 S.Ct. 65, 308 U.S. 631, 84 L.Ed. 526; Bethlehem Steel Co. v. Anglo-Continentale Treuhand, 1939, 59 S.Ct. 856, 307 U.S. 265, 83 L.Ed. 1280, rehearing denied 59 S.Ct. 1040, 307 U.S. 650, 83 L.Ed. 1529.

Where foreign corporations holding domestic bonds payable in money of the United States, or in optional amounts of

foreign currency, sought to enforce obligation thereof in United States, they were subject to provisions of this section as against contention that bonds represented a form of private international obligation not subject to laws of United States. Id.

Bond obligations payable in money of the United States or in optional fixed amounts of foreign currencies were dischargeable, dollar for dollar, in current legal tender money of the United States, notwithstanding that bonds, originally sold in United States, were offered both in this country and abroad, and that holders thereof were foreign corporations, some of whose bonds were purchased in foreign countries, where bonds were not purchased until after effective date of this section. Id.

Where property covered by trust mortgage securing bonds was located in United States, trustee was required to be a New York trust company, and enforcement of obligations was responsibility of trustee, mortgage and bonds were domestic obligations, and law of the United States governed in determining whether bonds were within this section. Guaranty Trust Co. of New York v. Henwood, Mo.1939, 59 S.Ct. 847, 307 U.S. 247, 83 L. Ed. 1266; Chemical Bank & Trust Co. v. Henwood, Mo.1939, 59 S.Ct. 847, 307 U.S. 247, 83 L.Ed. 1266.

Alternative promises in bonds giving bondholders option to elect payment in dollars, guilders, pounds, marks or francs were not separate and independent contracts or obligations, but were parts of a single monetary obligation, as respects whether bonds were "obligations payable in money of the United States" within this section. Id.

Where bonds granted holders an option to elect payment in dollars, guilders, pounds, marks or francs, fact that option to receive payment in dollars had never been exercised did not prevent the bonds from being "obligations payable in money of the United States" within this section. Id.

It was intended by this section to outlaw all contractual provisions requiring debtors, who had bound themselves to pay United States dollars, to pay a greater number of dollars than promised, and to prevent tying of debts payable in dollars to any fixed value of particular money. Id.

The obligation to pay under bonds granting holders an option to elect payment in dollars, guilders, pounds, marks, or francs was a single monetary obligation under which payment might be required in United States dollars, and was therefore an "obligation payable in money of the United States" within this section. Id.

Contracts for sale or delivery of gold for industrial purposes are not within this section. Holyoke Water Power Co. v. American Writing Paper Co. (Mass. 1937) 57 S.Ct. 485, 300 U.S. 324, 81 L.Ed. 678.

A contract for the payment as rent of a quantity of gold equal in amount to $1,500 of the gold coin of the United States of the standard of weight and fineness of the year 1894, or the equivalent of this commodity in United States currency, is within the terms of this section, and may be discharged in money of the standard established by law. Id.

The holder of a Fourth Liberty Loan 4¼ per cent. bond payable in United States gold coin "of the present standard of value" was not entitled to receive from the United States an amount in legal tender currency equivalent in value to the actual amount of gold promised in the bond. Bakewell v. U. S., C.C.A.Mo. 1940, 110 F.2d 564, certiorari denied 60 S. Ct. 1081, 310 U.S. 638, 84 L.Ed. 1407.

Under 99-year lease providing for quarterly payments of rental in gold coin for first seven years and stated quantity of pure gold thereafter, but giving lessors option to require payments of stated sum in lawful currency, lessees need not pay rent in currency of value of required gold bullion after effective date of this section, but need only make optional or alternative currency payments expressed in instrument. Emery Bird Thayer Dry Goods Co. v. Williams, C.C.A.Mo.1939, 107 F.2d 965, certiorari denied 60 S.Ct. 468, 309 U.S. 655, 84 L.Ed. 1004.

A provision in 99-year lease of realty from trustees of common-law trust for quarterly payments of rental in gold bullion after first seven years, during which rent was payable in gold coin, was intended solely for purpose of stabilizing money value of dollar rental, so as to render this section applicable to lease. Id.

Lessors' option under 99-year lease to require payments of rental in currency instead of pure gold as provided for therein was not merely offer by lessee which gave rise to no right or duty, but contract obligation, so that failure to exercise it did not exclude lease from application of this section. Id.

The right to elect payment of mortgage debt in guilders or guilder value given by provision of mortgage whereby payment was promised in gold coin of the United States in New York, or in guilders in Amsterdam, Holland, was rendered nugatory by this section. Chemical Bank & Trust Co. v. Henwood, C.C.A.Mo.1938, 98 F.2d 179, affirmed 59 S. Ct. 847, 307 U.S. 247, 83 L.Ed. 1266.

A provision that corporate bonds were payable in New York City in the amount of $1,000 in gold coin of the United States of or equal to the standard of weight and fineness as it existed January 1, 1912, or in Amsterdam, Holland, in the amount of 2,490 guilders, created an obligation for the payment of money and not for the delivery of gold as upon the sale of a commodity. Guaranty Trust Co. of New York v. Henwood, C.C.A.Mo. 1938, 98 F.2d 160, affirmed 59 S.Ct. 847, 307 U.S. 247, 83 L.Ed. 1266.

A provision that bonds were payable in New York City in the amount of $1,000 in gold coin of the United States of or equal to the standard of weight and fineness as it existed January 1, 1912, or in Amsterdam, Holland, in the amount of 2,490 guilders, gave an option of payment either in gold dollars of a specified weight and fineness or in a foreign currency, the amount or value of which was based upon such gold dollars, and hence was unenforceable under this section. Id.

Decree, dismissing grantee's prior action to restrain trustee's impending sale and to obtain possession of property on ground of illegality of provisions of trust deed and chattel mortgage requiring payment in gold of obligations which they secured, was res judicata, and estopped grantee from thereafter maintaining action against trustee and purchaser at trustee's sale to obtain possession of property on ground that trustee's deed to purchaser was void, because provision in trust deed that trustee and his successors should be senior officer of certain company was illegal as enabling such company to conduct trust business in violation of California statute, since such matter could have been presented in prior action. Pacific Hotel Apartment Co. v. Arcady-Wilshire Co. (C.C.A.

Cal.1937) 89 F.2d 248, certiorari denied 58 S.Ct. 55, 302 U.S. 731, 82 L.Ed. 565.

Presidential proclamation No. 2067 and legislation reducing gold content of dollar, prohibiting possession of gold coin or payment in gold coin by United States, deprived Secretary of Treasury of power to pay gold on Liberty Loan gold bonds, or to pay in paper money value of gold which they promised. Machen v. U. S., C.C.A.1937, 87 F.2d 594, reversed on other grounds 58 S.Ct. 248, 302 U.S. 329, 82 L.Ed. 294, 114 A.L.R. 807.

Under indentures providing for payment of rentals in gold or its equivalent in currency, lessor held entitled only to price paid by government for gold held in noncompliance with order of Secretary of Treasury fixing period within which gold might be surrendered pursuant to statute. In re American Writing Paper Co. (D.C.Mass.1935) 11 F.Supp. 518, affirmed 83 F.2d 398.

Provision of trust deed note for payment in gold coin held not to release obligor from payment of debt in other lawful currency, notwithstanding presidential proclamation. Stone v. Watt (Tex. Civ. App. 1935) 81 S.W.(2d) 552.

Under indenture providing for payment of rental in gold or its equivalent in currency, alternative to pay in gold held terminated by impossibility of performance brought about by statute and executive orders prohibiting payment of obligations in gold. Holyoke Water Power Co. v. American Writing Paper Co., Inc. (D. C. Mass. 1935) 9 F. Supp. 451.

Statute prohibiting payment of obligations in gold held applicable to indenture providing for payment of rental in gold or its equivalent in currency. Id.

Under indenture providing for payment of rental in gold or its equivalent in currency, obligation cannot be discharged by payment of dollar for dollar in currency. Id.

Under indenture providing for payment of rental in gold or its equivalent in currency, obligation can be discharged by payment of currency equal to value of gold at time and place of payment in Massachusetts, and not in London, claimed to be the nearest available market, in view of statute and executive orders prohibiting payment of obligations in gold. Id.

That American corporation whose bonds were payable in United States gold or in alternative specified currencies formerly announced a policy of paying undepreciated currency to bona fide foreign holders of bonds who had not purchased bonds for speculating after devaluation of American currency by congressional resolution did not prevent corporation from later insisting upon its legal rights under this section which released the obligation of paying bonds in gold and permitted the payment in devalued United States currency. Zurich General Accident & Liability Ins. Co. v. Lackawanna Steel Co., 1937, 299 N.Y.S. 862, 164 Misc. 498.

Corporation issuing bonds with attached coupons obligating corporation to pay coupons in United States gold or, in the alternative, currencies of specified foreign countries, was not obligated, to a foreigner who had purchased coupons from American holders and presented the coupons for payment in Switzerland, to pay the value of the coupons in Swiss francs in a sum substantially in excess of the United States dollars called for by the coupons as a result of the devaluation of American currency by this section permitting every obligation payable in money of United States or which gives the obligee the right to demand payment in gold to be paid dollar for dollar in legal tender, since language of this section was broad enough to cover coupons even though they were alternatively payable in other currencies. Id.

Sale by trustee named in deed of trust which provided for payment in gold coin of the United States held not void on ground that provision was against public policy after congressional resolution authorized discharge of obligation to pay gold coin by payment of any legal tender, since effect of resolution was to strike provisions for payment in gold. Pacific States Savings & Loan Co. v. O'Neill (1936) 61 P.(2d) 1160, 7 Cal.(2d) 596.

Notice of sale under trust deed that sale would be made for cash, payable in United States gold coin, held not invalid on ground that terms could not be met because possession of gold was illegal, where congressional resolution authorized discharge of obligation to pay gold coin by payment of any legal tender, since its effect was to strike provision for payment in gold coin. Security-First Nat. Bank of Los Angeles v. Cuesta (Cal. App.1936) 59 P.(2d) 542.

Petition to enjoin sale under power in security deed, on ground that federal legislation and order of President made it impossible to conform to provision of security deed notes for payment in gold coin, stated no cause of action, in absence of offer to pay in any medium or to do equity. Stephens v. National Life Ins. Co. (1934) 176 S. E. 772, 179 Ga. 619.

Defendant's plea that indenture requiring payment in gold was against public policy and could be discharged by payment in coin or currency constituting legal tender raised only question of damages which was not required to be heard prior to trial of whole case, in view of abolition of special pleas in bar in Massachusetts. Holyoke Water Power Co. v. American Writing Paper Co., Inc. (D. C. Mass. 1934) 8 F. Supp. 656.

Railroad bonds issued May 1, 1903, and payable May 1, 1933, in "gold coin of the United States of the present standard of weight and fineness," held enforceable only in equity and payable in current money, in view of congressional resolution making all debts dischargeable on payment in any coin or currency which at time of payment is legal tender for public and private debts. In re Missouri Pac. R. Co. (D. C. Mo. 1934) 7 F. Supp. 1, affirmed 55 S.Ct. 407, 294 U.S. 240, 79 L.Ed. 885, 95 A.L.R. 1352.

Bonds providing for payment $1,000 in "gold coin of the United States of the present standard of weight and fineness" held promises to pay in gold, as a commodity and not as money, equal to gold content of $1,000 of United States gold coin of the weight and fineness as of time of issue. Id.

Where railroad bonds, issued in 1903, States gold coin of then standard of weight provided for payment only in United and fineness, bondholders may not require payment of such currency as shall equal current gold value of debt if payment in gold is unlawful. Id

Fact that execution of note calling for payment in gold coin was procured as part of conspiracy to control price of gold held no defense to trustee's foreclosure of trust deed securing payment of note, in absence of showing that payment in gold coin had been demanded or that tender of legal tender notes had been made in payment, and in view of Presidential Order and Congressional Resolution permitting discharge of such obligations by any form of legal tender. First Nat. Bank v. Anderson (Ill.App.1936) 3 N.E.(2d) 109.

Congressional joint resolution declaring gold clause in obligations to be against public policy and providing for discharge of such obligations on payment, dollar for dollar, of legal tender coin, or currency at time of payment, held to apply to bearer bonds sold by foreign corporation to another foreign corporation in New York with promise to pay in gold coin of United States of standard of weight and fineness as it existed on July 1, 1924. Compania De Inversiones Internacionales v. Industrial Mortg. Bank of Finland (N.Y.1935) 198 N.E. 617, 269 N.Y. 22, 101 A.L.R. 1313, certiorari denied 56 S.Ct. 443, 297 U.S. 705, 80 L.Ed. 993.

Obligation of bearer bonds sold by foreign corporation to another foreign corporation to pay in gold coin of United States of standard of weight and fineness as it existed on July 1, 1924, was sanctioned by law when bonds were executed, but was subject to power of Congress to withdraw part of that sanction pursuant to its power to regulate monetary system. Id.

School refunding bonds providing for payment in gold coin of United States of or equal to present standard of weight and fineness held to be payable in lawful money of United States. Southwest Securities Co. v. Board of Education of Village of Lovington (1936) 54 P.(2d) 412, 40 N.M. 59.

2. Gold coins of foreign nations

In action to recover on interest coupons attached to negotiable bonds, which coupons were payable at option of holder in United States gold coin, or in guilders in Holland, by foreign corporation which purchased coupons after June 5, 1933, and which presented coupons for payment in Amsterdam where they had been formerly paid, damages recoverable in dollars were required to be calculated at gold par of guilder and not at rate of exchange prevailing in New York at time of judgment. Anglo-Continentale Treuhand, A. G., v. St. Louis Southwestern Ry. Co. (C.C.A.N.Y.1936) 81 F.(2d) 11, 105 A.L.R. 636, certiorari denied 56 S.Ct. 675, 298 U. S. 655, 80 L.Ed. 1381.

Statute held not to include gold coins of foreign nations, and hence did not affect provision in corporation's bond interest coupons making coupons payable at option of holder in guilders of the Netherlands, francs of Switzerland, or currency of certain other foreign countries. McAdoo v. Southern Pac. Co. (D. C.Cal.1935) 10 F.Supp. 953, reversed on other grounds 82 F.2d 121.

Under statute, Pennsylvania corporation which in 1912 issued bonds to which were attached interest coupons promising to pay bearer $25 in United States gold coin in New York, or 5 pounds, 2 shillings, 10 pence in London, or 62 guilders, 25 cents, in Amsterdam, held liable to domestic corporate holder of such coupons in existing currency only and not in the dollar equivalent of guilders, though such coupons were presented in Amsterdam when $25 had a value of about 38⅛ guilders instead of 62¼ guilders as in 1912. City Bank Farmers Trust Co. v. Bethlehem Steel Co. (1935) 280 N. Y. S. 494, 244 App. Div. 634.

3. Notice of sale under mortgage or deed of trust

Notice of sale under trust deed that sale would be made for cash, payable in United States gold coin, held not invalid on ground that terms could not be met because possession of gold was illegal, where congressional resolution authorized discharge of obligation to pay gold coin by payment of any legal tender, since its effect was to strike provision for payment in gold coin. Security-First Nat. Bank of Los Angeles v. Bennett (1936) 62 P.(2d) 798, 17 Cal.App. 641.

Where notice of sale under trust deed required cash payment in United States gold coin, and subsequent thereto, but prior to sale, obligations requiring payment in gold were by statute made payable in legal tender, failure to change notice so as to allow such payment held not to invalidate sale. McLaughlin v. Mutual Building & Loan Ass'n of Las Vegas, 1936, 60 P.2d 272, 57 Nev. 181.

4. Gold bullion

This section applies to contract for delivery of bullion if parties intended to use gold bullion to stabilize value of dollar, but not if they intended to obtain gold for uses in manufacture, arts, or the like without relation to money. Emery Bird Thayer Dry Goods Co. v. Williams, C.C.A.Mo.1939, 107 F.2d 965, certiorari denied 60 S.Ct. 468, 309 U.S. 655, 84 L.Ed. 1004.

5. Anticipatory breach of contract

Existence of joint resolution making every obligation purporting to be payable in gold dischargeable on payment of legal tender did not amount to anticipatory breach which made notice of call for redemption of Liberty Loan gold bonds void from its inception. Smyth v. U. S., Md.1937, 58 S.Ct. 248, 302 U.S. 329, 82 L.Ed. 294, 114 A.L.R. 807.

Even if existence of joint resolution making every obligation purporting to be payable in gold dischargeable on payment of legal tender constituted anticipatory breach, where notice calling Liberty Loan gold bonds for payment was published, the anticipatory breach could have no effect upon right of bondholders to postpone time of payment to date of natural maturity, but sole effect, if any, would be to clothe bondholders with privilege to declare payment overdue. Id.

5½. Construction of contract

In determining whether parties to lease, providing for payment of rentals in gold coin for part of term and pure gold thereafter, intended to use gold bullion to stabilize value of dollar, so as to render this section applicable to lease, court must consider lease, parties' situation, and their business needs and expectations. Emery Bird Thayer Dry Goods Co. v. Williams, C.C.A.Mo.1939, 107 F.2d 965, certiorari denied 60 S.Ct. 468, 309 U.S. 655, 84 L.Ed. 1004.

6. Alien transferee

Foreigner to whom American holders had transferred coupons of bonds of American corporation which were payable in gold or, in the alternative, in specified foreign currencies, was not entitled to summary judgment for any amount in excess of the amount specified in gold on the face of the coupons, where there was present the issue whether the transfer of the coupons was bona fide or with intent to evade the effects of this section, which issue could only be determined on trial. Zurich General Accident & Liability Ins. Co. v. Lackawanna Steel Co., 1937, 299 N.Y.S. 862, 164 Misc. 498.

Where domestic holder of corporation bond coupons containing multiple currency clauses, calling for payment in United States gold coin or specified alien currencies at holder's option, transfers coupons to alien holder after passage of this section, alien transferee may sue on coupons, but only where transfer was made in good faith rather than to profit by currency difficulties. Anglo-Continentale Treuhand, A. G., v. Southern

Pac. Co., 1937, 299 N.Y.S. 859, 165 Misc. 562, affirmed 298 N.Y.S. 181, 251 App. Div. 803.

In action by alien holder of bond coupons containing multiple currency clauses, for damages for failure to pay in alien currency in foreign country, defended on ground that alien holder obtained coupons from domestic holder after passage of this section, obligor was entitled to trial on issue of whether transfer to alien holder was in good faith, and hence to denial of motion for summary motion. Id.

7. Contract as enforceable

That note provided for payment in gold coin of the United States did not render it unenforceable under subsection (a) of this section declaring such provisions to be against public policy, but the obligation was subject to discharge by payment in any coin or currency which was legal tender for payment of public or private debts. Anderson v. Ruberg, 1945, 160 P.2d 456, 66 Idaho 417.

CHAPTER 10.—THE PUBLIC MONEYS

Sec.
486a. Repealed.
487a. Disposal of scientific or technical equipment, etc., by Office of Scientific Research and Development; disposition of proceeds [New].
487b. [New; Repealed].
488a. Deposit of fees collected under regulations relating to "Smokey Bear"; availability [New].
493a. Army officers permitted to keep receipts from sales and other sources for current expenditures [New].
495a. Use by officers of Navy, Marine Corps and Coast Guard of moneys for current expenditures [New].
504a. Validation of payments to reserve officers promoted while on active duty [New].
504b. Validation of payments to reserve officers on active duty for rental allowances [New].
528. **Duplicates for lost, stolen, destroyed, mutilated or defaced checks**
(a) Issuance of duplicates; bond of indemnity; liability for erroneous issuance.
(b) Exceptions.
(c) Checks drawn on depositaries in foreign countries or United States Territories and possessions; liability for erroneous issuance.
(d) Rules and regulations.
(e) Post Office Department check.
(f) Payment of substitute check.
(g) Definitions.
(h) Delegation and redelegation of authority.
529a. Same; enforcement of narcotic drug provisions; reimbursement of appropriations [New].
529b. Advances for Bureau of Customs in foreign countries [New].
529c. Same; enforcement of customs provisions [New].
529d. Certification of reason for advance [New].
529e. Same; payments for Bureau of Customs in foreign countries; claims for reimbursement [New].
529f. Same; advances from available appropriations; rules and regulations [New].
529g. "Narcotics laws" defined [New].
529h. Same; advances by the Office of Scientific Research and Development [New].
547a. Investment of trust funds [New].
551. Use of public moneys for expenses of conventions or other assemblages [New].
552. Same; 4-H Boys and Girls Clubs [New].

CHECK FORGERY INSURANCE FUND [NEW].

561. Creation of fund; appropriations.
562. Payments from fund to payees, etc., of lost or stolen checks on United States paid on forged indorsements.
563. Criminal or civil liability of forger and subsequent indorsers; deposit of collections.
564. Rules and regulations.

R. S. §§ 3655 and 3656, set out in a note under this chapter head, was repealed by Act Mar. 3, 1933, c. 202, § 1, 47 Stat. 1430.

§ 471. Certain duties of Division of Public Moneys transferred to Bureau of Accounts of the Fiscal Service

The duties appertaining on June 10, 1921, to the Division of Public Moneys of the office of the Secretary of the Treasury, so far as they related to the covering of revenues and repayments into the Treasury, the issue of duplicate checks and warrants, and the certification of outstanding liabilities for payment, shall be performed by the Bureau of Accounts of the Fiscal Service of the Treasury Department. June 10, 1921, c. 18, § 308, 42 Stat. 25; Reorg. Plan No. III, § 1 (a) (1) (3), eff. June 30, 1940, 5 Fed.Reg. 2107, 54 Stat. 1231.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Division of Bookkeeping and Warrants was transferred to Bureau of Accounts of the Fiscal Service of the Treasury De-

partment by Reorganization Plan No. III, § 1(a) (1) (3), cited to text, set out as note following 133t of Title 5, Executive Departments and Government Officers and Employees.

§§ 472, 474

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 475. Same; bonds

Words "assistant treasurers" in line 4 should read "depositaries."

Word "Solicitor" in line 6 should read "General Counsel for the Department."

"May 29, 1920, c. 214, § 1, 41 Stat. 654; May 10, 1934, c. 277, § 512, 48 Stat. 759," should be added to the citation.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 476. Transfer of duties of assistant treasurers to other officers, etc.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 478. Member banks as depositaries

The words "of the Federal reserve system" should be read into line 3 of this section after "banks."

§ 482. Collectors of public moneys to pay over

All collectors and receivers of public money of every description, within the District of Columbia, shall, as often as they may be directed by the Secretary of the Treasury or the Postmaster General so to do, pay over to the Treasurer of the United States, at the Treasury, all public moneys collected by them or in their hands. All such collectors and receivers of public moneys within the cities of New York, Boston, Philadelphia, New Orleans, San Francisco, Baltimore, Charleston, and Saint Louis shall, upon the same direction, pay over to the designated depositary in their respective cities, at such offices, respectively, all the public moneys collected by them, or in their hands; to be safely kept by the respective depositaries, until otherwise disposed of according to law. It shall be the duty of the Secretary and Postmaster General, respectively, to direct such payments by collectors and receivers, at least as often as once in each week, and as much oftener as they may think proper. (R. S. § 3615; May 29, 1920, c. 214, § 1, 41 Stat. 654.)

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 484. Deposit without deduction

Rental of plant in connection with river and harbor works, deposit of proceeds, see section 559 of Title 33, Navigation and Navigable Waters.

Diplomatic missions, consular offices, and district accounting and disbursing offices of the foreign service, use of moneys received for salaries, allowances, see sections 23k and 23l of Title 22, Foreign Relations and Intercourse.

The words "in section 487 of this title" should be inserted after "provided" in line 3 of this section.

See section 487 of this title and sections 23k and 23l of Title 22, Foreign Relations and Intercourse.

11. Royalties

Secretary of Navy had no authority to contract for development of oil reserves with provision for exchange of royalties for fuel depots and pipe lines. Mammoth Oil Co. v. U. S. (Wyo. 1927) 48 S. Ct. 1, 275 U. S. 13, 72 L. Ed. 137.

§ 486a. Repealed. July 1, 1944, c. 373, Title VII, § 711, 58 Stat. 714, renumbered Aug. 13, 1946, c. 958, § 5, 60 Stat. 1049.

Section, Act May 14, 1935, c. 110, Title I, § 1, 49 Stat. 229, which provided for collections by Public Health Service for care of foreign seamen, is now covered by section 221 of Title 42, The Public Health and Welfare.

Congressional Comment: For legislative history and purpose of Act Aug. 13, 1946, cited to text, see 1946 U.S.Code Cong. Service, p. 1558.

§ 487. Proceeds of sales of material

All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of commissary stores to the officers and enlisted men of the Army, or of materials, stores, or supplies sold to officers and soldiers of the Army or of the sale of condemned Navy clothing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, or as provided in section 485 of Title 40, or in other law, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of "proceeds of Government property", and shall not be withdrawn or applied, except in consequence of a subsequent appropriation made by law. Under such regulations as the Secretary of the Army may prescribe, the commanding officers of mounted units of the National Guard may sell all stable refuse and empty grain sacks and containers at public or private sale and apply the proceeds derived therefrom to the purchase of feed, supplementing the regular allowance and issue for the animals of the said units, and for the purchase of stable equipment, and horseshoers', saddlers', blacksmiths', and wagoners' tools not an article of issue to such organizations. As amended Oct. 14, 1940, c. 875, § 4, 54 Stat. 1136; July 26, 1947, c. 343, Title II, § 205 (a), 61 Stat. 501; Aug. 4, 1939, c. 393, § 20, 63 Stat. 561; Oct. 31, 1951, c. 654, § 4(3), 65 Stat. 708.

Amendments. Act Oct. 31, 1951, inserted "or as provided in section 485 of Title 40, or in other law,".

Act Aug. 4, 1949, cited to text, amended section by repealing phrase "or of the sales of Coast Guard cutters" following "marine hospitals" in first sentence, as this provision is now covered by section 92(d) of Title 14, Coast Guard.

Last sentence was added by Act Oct. 14, 1940, cited to text.

Effective date. Amendment of section by Act Aug. 4, 1949, cited to text, effective as of the first day of the third month after the month of approval, August 1949, see note set out preceding chapter 1 of Title 14, Coast Guard.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

§ 487a. Disposal of scientific or technical equipment, etc., by Office of Scientific Research and Development; disposition of proceeds

The Office of Scientific Research and Development may sell, lease, lend, or otherwise dispose of, under such terms and conditions as it may deem advisable, devices, scientific or technical equipment, models, or other articles of personalty, developed, constructed, produced in or purchased for the performance of its scientific or medical contracts, except articles acquired for administrative purposes, and all receipts from such dispositions shall be covered into the Treasury as miscellaneous receipts. July 12, 1943, 3 p. m., E. W. T., c. 228, § 1, 57 Stat. 530; June 28, 1944, c. 301, Title I, § 1, 58 Stat. 539; July 17, 1945, c. 319, § 1, 59 Stat. 476; July 23, 1946, c. 591, Title I, 60 Stat. 606.

Act July 23, 1946, cited to text, amended section by omitting "The Director of" preceding "Office".

§ 487b. Repealed. Aug. 4, 1949, c. 393, § 20, 63 Stat. 561.

Section Act Aug. 2, 1946, c. 756, § 29, 60 Stat. 857, related to crediting of proceeds from sales of Coast Guard rations, supplies, and clothing, and is not now covered.

§ 488. Proceeds of sale of surplus cuttings

The proceeds derived from the sale of surplus cuttings of material for clothing manufactured by the branch, office, or officers of the Army the Secretary of the Army may from time to time designate shall be deposited to the credit of that appropriation out of which the material was purchased. As amended June 28, 1950, c. 383, Title IV, § 402 (m), 64 Stat. 273.

1950 Amendment. Act June 28, 1950, cited to text, amended section by substituting "branch, office, or officers of the Army the Secretary of the Army may from time to time designate" for "Quartermaster Corps of the Army".

Cross References. Credit to be made to account for replacing clothing and equipage of only such amounts as represent sales of stores, materials, and supplies at actual cost to the War Department, see section 7251 of this title.

Legislative History: For legislative history and purpose of Act June 28, 1950, cited to text, see 1950 U.S.Code Cong. Service, p. 2607.

§ 488a. Deposit of fees collected under regulations relating to "Smokey Bear"; availability

The Secretary of Agriculture shall deposit into a special account to be available for furthering the nation-wide forest-fire prevention campaign all fees collected under regulations promulgated by him relating to "Smokey Bear" under the provisions of section 711 of Title 18. May 23, 1952, c. 327, § 3, 66 Stat. 92.

Legislative History: For legislative history and purpose of Act May 23, 1952, see 1952 U.S.Code Cong. and Adm.News, p. 1484.

§ 489. Payment of expenses of sales from proceeds

Subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended, from the proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, before being deposited into the Treasury, either as miscellaneous receipts on account of "proceeds of Government property" or to the credit of the appropriations to which such proceeds are by law authorized to be made, there may be paid the expenses of such sales, as approved by the General Accounting Office, so as to require only the net proceeds of such sales to be deposited into the Treasury, either as miscellaneous receipts or to the credit of such appropriations, as the case may be. As amended Oct. 31, 1951, ch. 654, § 2(20), 65 Stat. 707.

References in Text. The Federal Property and Administrative Services Act of 1949, as amended, referred to in the text, is classified to chapter 11B of Title 5, Executive Departments and Government Officers and Employees, chapter 10 of Title 40, Public Buildings, Property, and Works, chapter 4 of Title 41, Public Printing and Documents.

1951 Amendment. Act Oct. 31, 1951 inserted the reference to applicable regulations of the Federal Property and Administrative Act of 1949, as amended.

§ 493a. Army officers permitted to keep receipts from sales and other sources for current expenditures

Hereafter, without deposit to the credit of the Treasurer of the United States and withdrawal on money requisitions, receipts of public moneys from sales or other sources by officers of the Department of Defense on disbursing duty and charged in their official accounts, except receipts to be credited to river and harbor and flood-control appropriations, may be used by them as required for current expenditures, all necessary bookkeeping adjustments of appropriations, funds, and accounts to be made in the settlement of their disbursing accounts. Aug. 1, 1953, c. 305, Title VI, § 611, 67 Stat. 350.

Similar Provisions. Similar provisions, on a fiscal year basis, were contained in the following prior appropriation acts:

1948—June 24, 1948, c. 632, 62 Stat. 651
1947—July 30, 1947, c. 357, Title I, § 1, 61 Stat. 553
1946—July 16, 1946, c. 583, § 1, 60 Stat. 543
1945—July 3, 1945, c. 265, § 1, 59 Stat. 386
1944—June 28, 1944, c. 303, § 1, 58 Stat. 575
1943—July 1, 1943, c. 185, § 1, 57 Stat. 349
1942—July 2, 1942, c. 477, § 1, 56 Stat. 613
1941—June 30, 1941, 6:20 p.m., E.S.T., c. 262, § 1, 55 Stat. 369.
1940—June 13, 1940, c. 343, § 1, 54 Stat. 355
1939—April 26, 1939, c. 88, § 1, 53 Stat. 597
1938—June 11, 1938, c. 347, § 1, 52 Stat. 646

1937—July 1, 1937, c. 423, § 1, 50 Stat. 446

Legislative History: For legislative history and purpose of Act Aug. 1, 1953, see 1953 U.S.Code Cong. and Adm.News, p. —.

§ 495. Deposit of moneys with public depositary; receipts; postal revenues

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 495a. Use by officers of Navy, Marine Corps and Coast Guard of moneys for current expenditures

Without deposit to the credit of the Treasurer of the United States and withdrawal on money requisitions, receipts of public moneys from sales or other sources by officers of the Navy, Marine Corps, and Coast Guard on disbursing duty and charged in their official accounts may be used by them as required for current expenditures, all necessary bookkeeping adjustments of appropriations, funds, and accounts to be made in the settlement of their disbursing accounts. June 30, 1932, c. 318, 47 Stat. 433; Mar. 3, 1933, c. 213, 47 Stat. 1532; Mar. 15, 1934, c. 69, 48 Stat. 414; June 24, 1935, c. 291, 49 Stat. 410; June 3, 1936, c. 484, 49 Stat. 1409; April 27, 1937, c. 140, 50 Stat. 107; April 26, 1938, c. 175, § 1, 52 Stat. 235; May 25, 1939, c. 149, § 1, 53 Stat. 769; June 11, 1940, c. 313, Title I, 54 Stat. 277; May 6, 1941, c. 86, 55 Stat. 161; Act Feb. 7, 1942, c. 46, Title I, 56 Stat. 64; June 26, 1943, c. 147, § 1, 57 Stat. 204; June 22, 1944, c. 269, § 1, 58 Stat. 310; May 29, 1945, c. 130, § 1, 59 Stat. 209; July 8, 1946, c. 543, Title I, § 101, 60 Stat. 488; Aug. 2, 1946, c. 756, § 25, 60 Stat. 856.

Act Aug. 2, 1946, cited to text, made section applicable to officers of Coast Guard.

Section was not repeated in the Navy Department Appropriation Act, 1948, Act July 18, 1947, c. 268, 61 Stat. 382.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department, and the Coast Guard, also referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard when it is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

§ 496. Accounts

Words "herein contained" should read "contained in this section".

District accounting and disbursing offices of Foreign Service, see section 813 of Title 22, Foreign Relations and Intercourse.

Retention by agencies of accounts of accountable officers, contracts, vouchers or other documents, see section 67 of this title.

§ 497. Same; disbursing officers

All disbursing officers of the United States shall render their accounts quarterly; and the Secretary of the Senate shall render his accounts as otherwise provided; but the General Accounting Office may direct any or all such accounts to be rendered more frequently when in its judgment the public interests may require. Aug. 30, 1890, c. 837, § 4, 26 Stat. 413; June 10, 1921, c. 18, § 304, 42 Stat. 24.

§ 500. Payment of pressing obligations by certain disbursing officers

Advances to disbursing officers and agents of Army on requisition of Secretary of the Army, see sections 536–538 of this title.

§ 501. Payment by disbursing officers; settlement of transactions of Engineer Department

The words "of the Corps of Engineers or of the office, bureau, or department concerned" at end of section should be omitted.

"June 4, 1920, c. 227, subchapter I, § 9, 41 Stat. 766" should be added to citation.

See section 172 of Title 10.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

§ 502. Same; settlement of transactions of Signal Corps

The words "of the Signal Corps, or of the office, bureau, or department concerned" at end of section should be omitted.

"June 4, 1920, c. 227, subchapter I, § 9, 41 Stat. 766" should be added to citation.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Cross References. Chief of Finance charged with disbursement of funds of Department of the Army, see section 172 of Title 10, Army and Air Force.

§ 503. Same; Military Academy

The words "of the United States Military Academy or of the office, bureau, or department concerned" at end of section should be omitted.

"June 4, 1920, c. 227, subchapter I, § 9, 41 Stat. 766" should be added to citation.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Cross References. Chief of Finance charged with disbursement of funds of Department of the Army, see section 172 of Title 10, Army and Air Force.

§ 504. Same; Medical Department

The words "of the Medical Department or of the branch of the Army service, office, bureau, department, or establishment concerned" at end of section should be omitted.

"June 4, 1920, c. 227, subchapter I, § 9, 41 Stat. 766," should be added to the citation.

See section 172 of Title 10.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

§ 504a. Validation of payments to reserve officers promoted while on active duty

Section, Act May 15, 1936, c. 396, 49 Stat. 1275, validated payments made prior to May 15, 1936, to reserve officers promoted while on active duty.

§ 504b. Validation of payments to reserve officers on active duty for rental allowances

All payments made to military personnel of the Army on account of rental allowances, where the Secretary of the Army, under the authority of section 718 of Title 10, has determined that no quarters are available for such personnel, are ratified and validated, and the Comptroller General of the United States is directed to credit the accounts of disbursing officers of the United States with such payments, and to accept as final and conclusive in the audit of such accounts the determinations made by the Secretary of the Army under section 718 of Title 10. May 15, 1936, c. 395, 49 Stat. 1274; July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

§ 505. Suits to recover money from officers

"Department of Justice" should be substituted for "General Accounting Office."

"Ex.Ord.No.6166, § 5, June 10, 1933" should be added to the credit.

Function of prosecuting in the courts claims and demands by the Government of the United States transferred to Department of Justice, see Ex.Ord.No.6166, § 5, note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

10. Liability for interest

Without proving time when defalcating army officer received moneys, government could not recover interest authorized by statute. U. S. v. Geise (C. C. A. N. Y. 1932) 56 F.2d 583.

§ 506. Distress warrant

"Solicitor of the Treasury" in line 8 should read "General Counsel for the Department of the Treasury."

"May 10, 1934, c. 277, § 512, 48 Stat. 759," should be added to the citation.

Repealed. Insofar as first clause of this section related exclusively to Internal Revenue it was repealed and incorporated in part as section 3975 of Title 26, Internal Revenue. See section 4(a) of enacting sections of Internal Revenue Code preceding Subtitle A of Title 26.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 511. Sale of lands regulated

Words "sections 506-510 of this title" should be substituted for "the foregoing provisions."

§ 514. Failure of disbursing officer to account

"Solicitor of the Treasury" in line 9 should read "General Counsel of the Department of the Treasury."

"May 10, 1934, c. 277, Title III, § 513, 48 Stat. 758," should be added to the citation.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 516.[1] Extent of application of provision for distress warrants

[1] Number 515 was not used for a section in the original United States Code.

Words "in sections 506-520 of this title" should be inserted at end of section and word "herein" should be omitted.

§ 518. Injunction to stay distress warrant

Words "foregoing provisions" in first sentence should read "provisions of sections 506-517 of this title".

§ 519. Proceedings on distress

Words "in section 518 of this title" should be inserted immediately after "aforesaid".

§ 520. Rights of United States reserved

Words "sections 506-520 of this title" should be substituted for "this chapter".

§ 521. Duties of officers as custodians of public moneys

Functions of registers and receivers of land offices transferred to managers, see notes under sections 1 and 71 of Title 43, Public Lands.

This section originally used the words "naval officers of customs" instead of "comptrollers of customs." Act Sept. 21, 1922, cited thereto, was the authority for the change. That Act has been repealed by section 651(a) (1) of the Tariff Act of 1930, constituting section 1651 of Title 19, but section 523 of said Act, constituting section 1523 of Title 19, provides that naval officers of customs shall continue to be known as comptrollers of customs.

"June 17, 1930, c. 497, Title IV, § 523, 46 Stat. 740" should be added to citation.

Acceptance of government checks by naval stores located abroad, see section 552 of Title 34, Navy.

Office of receiver abolished and consolidated with office of register in land offices where compensation of both offices falls below $4,000 per annum, see sections 70, 71 of Title 43, Public Lands.

Offices of surveyors of customs and appraisers of merchandise abolished except in Port of New York, see section 5a of Title 19, Customs Duties.

Delegation of functions. For delegation to the Secretary of the Treasury of authority vested in the President by this section, see Ex.Ord.No.10289, September 17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, the assistant trea-

surer, collectors of customs, comptrollers of customs, and surveyors of customs, referred to in this section, are all officials of the Treasury Department.

11. Deputy collectors of customs

This section by necessary implication covers deputy collectors of customs. U. S. Fidelity & Guaranty Co. v. U. S., C. C.A.Tex.1937, 91 F.2d 848.

§§ 522, 523, 526

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 528. Duplicates for lost, stolen, destroyed, mutilated or defaced checks—Issuance of duplicates; bond of indemnity; liability for erroneous issuance

(a) Except as provided in this section, whenever it is clearly proved to the satisfaction of the Secretary of the Treasury that any original check of the United States is lost, stolen, or wholly or partly destroyed, or is so mutilated or defaced as to impair its value to its owner or holder, the Secretary of the Treasury is authorized, prior to the expiration of ten years from the date on which the original check was issued to transfer the amount of the original check from the account of the drawer or the account available for payment of the original check to a special deposit account carried in the name of the Secretary of the Treasury on the books of the Treasurer of the United States, and to issue against such special deposit account to the owner or holder thereof a substitute under current date showing such information as may be necessary to identify the original check, upon the receipt and approval by the Secretary of the Treasury of an undertaking to indemnify the United States, in such form and amount and with such surety, sureties, or security, if any, as the Secretary of the Treasury may require; but no such substitute shall be payable if the original check shall first have been paid: *Provided,* That nothing contained in this section shall be deemed to relieve any certifying officer or his sureties or any disbursing officer or his sureties of any liability to the United States on account of any payment resulting from the erroneous issuance of the original check: *And provided further,* That the authority conferred in this section to issue substitute checks may, in the case of checks issued on account of public-debt obligations and transactions regarding the administration of banking and currency laws, be exercised without limitation of time.

Exceptions

(b) An undertaking of indemnity shall not be required under subsection (a) of this section in any of the following classes of cases except as provided in this subsection: (1) If the Secretary of the Treasury is satisfied that the loss, theft, destruction, mutilation, or defacement, as the case may be, occurred without fault of the owner or holder and while the check was in the custody or control of the United States (including the postal service when carrying mail for any officer, employee, agent, or agency of the United States when performing services in connection with an official function of the United States, but not including the postal service when otherwise acting solely in its capacity as a public carrier of the mail), or of a person thereunto duly authorized as lawful agent of the United States, or while it was in the course of shipment effected pursuant to and in accordance with the regulations issued under the provisions of sections 134–134h of this title, this section, and section 738a of this title; (2) if substantially the entire check is presented and surrendered by the owner or holder and the Secretary of the Treasury is satisfied as to the identity of the check presented and that any missing portions are not sufficient to form the basis of a valid claim against the United States; (3) if

the Secretary of the Treasury is satisfied that the original check is not negotiable and cannot be made the basis of a valid claim against the United States; (4) if the amount of the check is not more than $200; (5) if the owner or holder is the United States or an officer or employee thereof in his official capacity, a State, the District of Columbia, a Territory or possession of the United States, including the Commonwealth of the Philippine Islands, a municipal corporation or political subdivision of any of the foregoing, a corporation, the whole of whose capital is owned by the United States, a foreign government, or a Federal Reserve bank: *Provided, however*, That in any of the foregoing classes of cases the Secretary of the Treasury may require an undertaking of indemnity if he deems it essential to the public interest.

Checks drawn on depositaries in foreign countries or United States Territories and possessions; liability for erroneous issuance

(c) Notwithstanding the provisions of subsections (a) and (b) of this section whenever it is clearly proved to the satisfaction of the Secretary of the Treasury that any original check of the United States drawn on a depositary in a foreign country or a Territory or possession of the United States, including the Panama Canal Zone, is lost, stolen, or wholly or partly destroyed, or is so mutilated or defaced as to impair its value to its owner or holder, the drawer of the original check or such other officer or employee of the United States as may be authorized by the Secretary of the Treasury with the concurrence of the head of the department or agency upon whose behalf the original check was issued is authorized, prior to the expiration of ten years from the date on which the original check was issued, to issue to the owner or holder thereof a substitute under current date showing such information as may be necessary to identify the original check, drawn against the account of the drawer of the original check or such other account as may be available for the payment of such substitute, upon the receipt and approval by the Secretary of the Treasury of an undertaking, to indemnify the United States, in such form and amount and with such surety, sureties, or security, if any, as the Secretary of the Treasury may require; but no such substitute shall be payable if the original check shall first have been paid. Nothing contained in this section shall be deemed to relieve any certifying officer or his sureties or any disbursing officer or his sureties of any liability to the United States on account of any payment resulting from the erroneous issuance of the original check.

Rules and regulations

(d) The Secretary of the Treasury shall have the power to make such rules and regulations as he may deem necessary for the administration of the provisions of this section.

Post Office Department check

(e) Notwithstanding the provisions of subsections (a) (d) of this section, whenever any original check of the Post Office Department has been lost, stolen, or destroyed, the Postmaster General may authorize the issuance of a substitute, marked "duplicate" and showing the number, date, and payee of the original check, prior to the expiration of ten years from the date on which the original check was issued, upon the execution by the owner thereof of such bond of indemnity as the Postmaster General may prescribe: *Provided*, That when the Postmaster General is satisfied that such loss, theft, or destruction occurred without fault of the owner or holder or while any check was in the custody or control of the Post Office Department or in the mails, the Postmaster General may, in lieu of an indemnity bond, authorize the issuance of a substitute check or warrant upon such affidavit as he may prescribe, to be made by the payee or owner of an original check.

Payment of substitute check

(f) Substitutes issued under this section drawn on the Treasurer of the United States, except those for checks issued on account of public-debt obligations and transactions regarding the administration of banking and currency laws, shall be deemed to be original checks and shall be payable under the same conditions as original checks. Substitutes for checks issued on account of public-debt obligations and transactions regarding the administration of banking and currency laws shall be payable directly by the Treasurer of the United States without limitation of time.

Definitions

(g) The term "original check" wherever used in this section means any check, warrant, or other order for the payment of money, payable upon demand and not bearing interest, drawn by a duly authorized officer or agent of the United States, the District of Columbia, or the District Unemployment Compensation Board, on their behalf against an account or funds of the United States, the District of Columbia, or the District Unemployment Compensation Board, including instruments issued by any wholly owned or mixed-ownership Government corporation or by any entity owned or controlled by the United States, the funds of which are deposited and covered into the Treasury of the United States or deposited with the Treasurer of the United States, but does not include money, coins, or currency of the United States; as used in subsection (e) of this section it means such an instrument drawn by a duly authorized officer or employee of the Post Office Department.

Delegation and redelegation of authority

(h) Any power, authority, or discretion conferred upon the Secretary of the Treasury by this section may be delegated by him, in whole or in part, subject to such terms and conditions as he may prescribe, to such individuals as he may designate within the Treasury Department or to the head of any other department or agency of the Government or of any Federal Reserve bank, and the head of such department or agency or Federal Reserve bank may, when such action is not inconsistent with the terms and conditions of the delegation by the Secretary of the Treasury, redelegate any power, authority, or discretion conferred upon him pursuant to this subsection to any officer or employee within such department, agency, or Federal Reserve bank. R.S. § 3646; Feb. 16, 1885, c. 123, 23 Stat. 306; Mar. 23, 1906, c. 1129, 34 Stat. 84; June 19, 1906, c. 3434, 34 Stat. 301; May 27, 1908, c. 206, 35 Stat. 415; Feb. 23, 1909, c. 174, 35 Stat. 643; Mar. 21, 1916, c. 52, 39 Stat. 37; July 8, 1937, c. 444, § 9, 50 Stat. 482; Aug. 10, 1939, c. 665, §§ 5–7, 53 Stat. 1359; Dec. 3, 1945, c. 515, § 1, 59 Stat. 592; July 11, 1947, c. 222, § 4(c–f), 61 Stat. 309; Mar. 10, 1952, c. 97, 66 Stat. 22.

Codification. References to the "Philippine Islands" in subsection (c) were omitted pursuant to Proc.No.2695, which granted independence to the Philippines on July 4, 1946, under the authority of section 1394 of Title 22, Foreign Relations and Intercourse, and under which section said Proc.No.2695 is set out as a note.

Amendments. Subsec. (a) amended by Acts July 11, 1947, § 4(c) and Dec. 3, 1945, both cited to text. Act July 11, 1947 extended the authority of the Secretary of the Treasury to transfer the amount of an original check to ten years from the date of issuance instead of within the fiscal year following the fiscal year of issuance and inserted provision as to account available for payment. Act Dec. 3, 1945, amended subsec. generally.

Subsec. (b) amended by Act Aug. 10, 1939, and Dec. 3, 1945, both cited to text. Act Aug. 10, 1939, amended causes (1)–(5), generally. Act Dec. 3, 1945, amended entire subsec. generally.

Subsec. (c) amended by Acts July 11, 1947, § 4(d), and Dec. 3, 1945, both cited to text. Act July 11, 1947, extended authority to issue substitute checks to ten years from date of original issue instead of during fiscal year following fiscal year of issuance. Act Dec. 3, 1945 added subsec. (c).

Subsec. (d), formerly subsec. (c), was relettered and reenacted without change by Act Dec. 3, 1945, cited to text.

Subsec. (e) amended by Acts Mar. 10, 1952, July 11, 1947, § 4(d) and Dec. 3, 1945, all cited to text. Act Mar. 10, 1952, enabled the Postmaster General to issue duplicate checks or warrants, without requiring an indemnity bond, when such checks or warrants are lost, stolen, or destroyed. Act July 11, 1947 extended authority to issue substitute checks to ten years from the date of original issuance instead of during fiscal year following fiscal year of issuance. Act Dec. 3, 1945, relettered subsec. (d) to be (e), substituted "(c) and (d)" for "and (c)", and "$100" for "$50".

Subsec. (f) amended by Acts July 11, 1947, § 4(e) and Dec. 3, 1945, both cited to text. Act July 11, 1947, omitted reference to section 725t of this title which was repealed by section 4(a) of said Act July 11, 1947. Act Dec. 3, 1945, relettered subsec. (e) to be (f) and amended it generally.

Subsec. (g) amended by Acts July 11, 1947, § 4(f), Dec. 3, 1945, Aug. 10, 1935, are cited to text. Act July 11, 1947, inserted provision specifying wholly owned or mixed ownership Government corporations in lieu of general reference to any corporation. Act Dec. 3, 1945, relettered subsec. (f) to be (g), and substituted "subsection (e)" for "subsection (d)". Act Aug. 10, 1939, amended subsec. generally.

Subsec. (h) added by Act Dec. 3, 1945, cited to text.

Effective date. Effective date of Act July 11, 1947, cited to text, see note under section 132 of this title.

Section 3 of Act Dec. 3, 1945, cited to text, provided that this section should become effective on Dec. 1, 1945.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

Cross References. For lost, destroyed, etc., interest-bearing security, see section 738a of this title.

Forged indorsements, settlement with payees of lost or stolen checks which have been paid on, see section 561 et seq. of this title.

Payment of unpaid checks from special-deposit account, see sections 132-134 of this title.

Congressional Comment and Legislative History: For legislative history and purpose of Act July 11, 1947, cited to text, see 1947 U.S.Code Cong.Service, p. 1282. See, also, Act Mar. 10, 1952, 1952 U.S.Code Cong. and Adm.News, p. —.

§ 529. Advances of public moneys; prohibition against

No advance of public money shall be made in any case unless authorized by the appropriation concerned or other law. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected. As amended Aug. 2, 1946, c. 744, § 11, 60 Stat. 809.

Act Aug. 2, 1946, cited to text, qualified first sentence to permit advances authorized by an appropriation or other law.

Advances to Bureau of Customs in foreign countries permitted notwithstanding this section, see section 529b of this title.

This section is made inapplicable to subscription charges for newspapers, magazines and other periodicals for official use by section 118b of Title 5.

Advance payments for rent of offices in foreign countries by Bureau of Foreign and Domestic Commerce permitted notwithstanding this section, see section 531 of this title.

Advances of public money to various agencies of the Government, see sections 532, 533, 534, 535, 536, 539, 542, 550 of this title.

Availability of funds for acquisition of land and other interests without compliance with this section, see sections 767 and 771 of Appendix to Title 50, War and National Defense.

Construction of Air Engineering Development Center without regard to this section, see section 522 of Title 50, War and National Defense.

Department of Agriculture employees stationed abroad, payment of official expenses in advance, see section 543b of Title 5, Executive Departments and Government Officers and Employees.

Flood control work, payment in advance to cooperating public agencies for services, see section 701b-2 of Title 33, Navigation and Navigable Waters.

Post-office inspectors, advance payments to for expenses, see section 787 of Title 39, The Postal Service.

Receipt, retention, and disbursement of public funds waiver of requirements of existing law, see section 665 of this title.

International Refugee Organization. Funds available for expenditure without regard to this section, see section 289c of Title 22, Foreign Relations and Intercourse.

Office of Scientific Research and Development. Advances of funds in connection with contracts entered into by Office of Scientific Research and Development were authorized by Act July 25, 1942, c. 524, Title I, 56 Stat. 709

Executive Order No. 10446. Ex.Ord.No. 10446, Apr. 17, 1953, 18 F.R. 2209, exempts the performance of functions with respect to the escapee program authorized by the Mutual Security Act of 1951, section 1651 et seq. of Title 22, Foreign Relations, from operation of this section.

2. Payments under contracts

Under government standard form bill of lading which covered ocean shipments and provided that prepayment of charges should not be demanded by carrier, payment in advance was prohibited, but accrual of freight charge obligation in advance of delivery was not forbidden. Alcoa S. S. Co. v. U. S., N.Y.1949, 70 S.Ct. 190, 338 U.S. 421, 94 L.Ed. 225.

§ 529a. Same; enforcement of narcotic drug provisions; reimbursement of appropriations

The Commissioner of Narcotics, with the approval of the Secretary of the Treasury, is authorized to direct the advance of funds by the Fiscal Service, Treasury Department, in connection with the enforcement of act Dec. 17, 1914, c. 1, 38 Stat. 785, sections 171–173, 174–185 of Title 21, and act Aug. 2, 1937, c. 553, 50 Stat. 551.

Moneys expended from appropriations of the Bureau of Narcotics, Treasury Department, for the purchase of narcotics, including marihuana, and subsequently recovered shall be reimbursed to the appropriation for enforcement of the narcotics and marihuana laws current at the time of the deposit. Mar. 28, 1928, c. 266, § 1, 45 Stat. 374; Aug. 7, 1939, c. 566, § 1, 53 Stat. 1262; Reorg. Plan No. III, § 1 (a) (1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; Oct. 20, 1949, c. 702, 63 Stat. 886.

Act Oct. 20, 1949, cited to text, amended section by adding second paragraph relating to reimbursement of appropriations.

Act Dec. 17, 1914, c. 1, 38 Stat. 785. See sections 2550–2561, 2563, 2564, 3220–3222, 3224, 3226–3228, 3797 of Title 26, Internal Revenue Code.

See sections 171–185 of Title 21, Food and Drugs.

Act Aug. 2, 1937, c. 553, 50 Stat. 551. See sections 2590–2603, 3230–3234, 3236–3238, 3797 of Title 26, Internal Revenue Code.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Narcotics, referred to in this section, is an officer of the Treasury Department, and the Bureau of Narcotics, and the Fiscal Service, Treasury Department, also referred to in this section, are agencies of that Department.

Division of Disbursements consolidated in Fiscal Service of Treasury Department, see Reorg. Plan No. III, § 1(a) (1), cited to text, set out as note following 133t of Title 5, Executive Departments and Government Officers and Employees.

Legislative History: For legislative history and purpose of Act Oct. 20, 1949, cited to text see 1949 U.S.Code Cong. Service, p. 2160.

§ 529b. Advances for Bureau of Customs in foreign countries

Section 529 shall not apply to payments made for the Bureau of Customs in foreign countries. (May 14, 1935, c. 110, § 1, 49 Stat. 222; June 23, 1936, c. 725, § 1, 49 Stat. 1832; May 14, 1937, c. 180, Title I, 50 Stat. 142; Mar. 28, 1938, c. 55, § 1, 52 Stat. 126; May 6, 1939, c. 115, § 1, Title I, 53 Stat. 660.)

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Bureau of Customs, referred to in this section, is an agency of the Treasury Department.

§ 529c. Same; enforcement of customs provisions

The Commissioner of Customs, with the approval of the Secretary of the Treasury, is authorized to direct the advance of funds by the Fiscal Service, Treasury Department, in connection with the enforcement of the customs laws. Mar. 28, 1928, c. 266, § 2, as added Aug. 7, 1939, c. 566, § 1, 53 Stat. 1263 as amended Reorg. Plan No. III, § 1(a) (1), eff. June 30, 1940, 5 Fed.Reg. 2107, 54 Stat. 1231.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Customs, referred to in this section, is an officer of the Treasury Department, and the Fiscal Service, Treasury Department, is an agency of that Department.

Cross References. Division of Disbursement consolidated into Fiscal Service, see note under section 529a of this title.

§ 529d. Certification of reason for advance

A certificate by the Commissioner of Customs or the Commissioner of Narcotics, as the case may be, stating the amount of an expenditure made from funds advanced and certifying that the confidential nature of the transaction involved renders it inadvisable to specify the details thereof or impracticable to furnish the payee's receipt shall be a sufficient voucher for the sum expressed to have been expended. Mar. 28, 1938, c. 266, as added Aug. 7, 1939, c. 566, § 1, 53 Stat. 1263.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Customs, and the Commissioner of Narcotics, both referred to in this section, are officers of the Treasury Department.

§ 529e. Same; payments for Bureau of Customs in foreign countries; claims for reimbursement

The provisions of sections 529a and 529c–529g of this title shall not affect payments made for the Bureau of Customs in foreign countries, nor the right of any customs or narcotics officer or employee to claim reimbursement for personal funds expended in connection with the enforcement of the customs or narcotics laws. Mar. 28, 1928, c. 266, § 4, as added Aug. 7, 1939, c. 566, § 1, 53 Stat. 1263.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Bureau of Customs, referred to in this section, is an agency of the Treasury Department.

§ 529f. Same; advances from available appropriations; rules and regulations

Advances pursuant to sections 529a and 529c–529g of this title in connection with the enforcement of the customs or narcotics laws may be made, notwithstanding the provisions of section 529 of this title, from the appropriations available for the enforcement of such laws. The Secretary of the Treasury is authorized to prescribe such rules and regulations concerning advances made pursuant to sections 529a, 529c–529g of this title as are necessary or appropriate for the protection of the interests of the United States. Mar. 28, 1928, c. 266, § 5, as added Aug. 7, 1939, c. 566, § 1, 53 Stat. 1263.

§ 529g. "Narcotics laws" defined

When used in sections 529a and 529c–529f of this title, the term "narcotics laws" includes Act of August 2, 1937, c. 553, 50 Stat. 551. Mar. 28, 1928, c. 266, § 5, as amended Aug. 7, 1939, c. 566, § 1, 53 Stat. 1263.

See sections 2590–2603, 3230–3234, 3236–3238, 3797 of Title 26, Internal Revenue Code.

§ 529h. Advances by the Office of Scientific Research and Development

Notwithstanding the provisions of section 529 of this title, in the expenditure of any funds heretofore or hereafter allocated to it, contracts entered into by the Office of Scientific Research and Development may provide for payments in advance of the rendering of the service or the delivery of the article contracted for, subject to such limitations as the Director of the Office of Scientific Research and Development may prescribe. Dec. 17, 1941, c. 591, title III, 55 Stat. 819.

§ 530. Same; payment in advance for periodicals

The subscriptions for publications for the Department of Agriculture, to be paid for by the Secretary of Agriculture; subscriptions to newspapers, magazines, periodicals, and other publications, purchased from funds of the branch, office, or officers of the Army the Secretary of the Army may from time to time designate; subscriptions for publications for the Veterans' Administration, to be paid for by the director; subscriptions for newspapers and periodicals for the naval service; subscriptions to periodicals, which have been certified in writing by the respective heads of the executive departments or other Government establishments to be required for official use, to be paid from appropriations available therefor; subscription charges for newspapers, magazines, and other periodicals for official use of any office under the Government of the United States or the municipal government of the District of Columbia, to be paid from appropriations available therefor, may be paid in advance. Mar. 3, 1905, c. 1483, § 1, 33 Stat. 1182; Mar. 4, 1909, c. 301, 35 Stat. 1054; Apr. 27, 1914, c. 72, 38 Stat. 362; Mar. 3, 1915, c. 83, 38 Stat. 929; Mar. 4, 1915, c. 141, § 5, 38 Stat. 1049; June 7, 1924, c. 292, § 1, 43 Stat. 533; June 12, 1930, c. 470, 46 Stat. 580; July 3, 1930, c. 863, § 1, 46 Stat. 1016; June 28, 1950, c. 383, Title IV, § 402(j), 64 Stat. 273; June 27, 1952, c. 477, Title IV, § 403(a) (9), 66 Stat. 279.

1952 Amendment. Act June 27, 1952, amended section by striking out "annual subscriptions for publications for use in the immigration service at large".

1950 Amendment. Act June 28, 1950, cited to text, amended section by substituting "branch, office, or officers of the Army the Secretary of the Army may from time to time designate" for "Quartermaster Corps".

Legislative History: For legislative history and purpose of Act June 28, 1950, cited to text, see 1950 U.S.Code Cong. Service, p. 2607.

§ 531. Same; payments for rent of offices in foreign countries

Transfer of Functions. The functions of all other officers of the Department of Commerce and the functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 591 of Title 5, Executive Departments and Government Officers and Employees.

§ 532. Same; by United States marshals

Functions relating to disbursement by United States marshals which would otherwise have became functions of Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, set out in note under section 133t of Title 5. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

§ 533. Same; Department of Agriculture

1. Bonds

There is no legal objection to taking a single bond containing separate conditions covering two types of advances and providing definitely in connection with each the amount of penalty applicable thereto, the bond being prescribed and approved by Secretary of Agriculture and Secretary of Treasury, each with respect to his own separate responsibility. 1935, 38 Op.Atty.Gen. 247.

§ 535. Advances from appropriation "Boundary line, Alaska and Canada, and the United States and Canada." * * * made to chiefs of parties prior to March 2, 1921: *Provided*, That the commissioner shall be allowed his traveling expenses in accordance with the provisions of sections 821–823, 824–833 of Title 5. (Apr. 29, 1926, c. 195, Title I, 44 Stat. 336; Feb. 24, 1927, c. 189, Title I, 44 Stat. 1185; Feb. 15, 1928, c. 57, Title I, 45 Stat. 70; Jan. 25, 1929, c. 102, Title I, 45 Stat. 1101; Apr. 18, 1930, c. 184, Title I, 46 Stat. 180.)

§ 536. Advance to disbursing officers and agents under "Army accounts of advances"; amounts; use of

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a) 61 Stat. 501.

§ 542. Repealed. July 11, 1941, c. 290, § 4, 55 Stat. 585.

§ 543. Exchange of funds restricted

Repeal of laws inconsistent with sections 315b, 408a, 408b, 441–446, 821, and 822a of this title, see section 446 of this title.

Function of disbursement of moneys of the United States exercised by any agency has been transferred to the Division of Disbursement, which division was consolidated into the Fiscal Service of the Treasury Department. See Ex.Ord. No.6166, § 4, and Reorg.Plan No. III, § 1(a) (1), eff. June 30, 1940, 5 Fed.Reg. 2107, 54 Stat. 1231, set out as notes under sections 132 and 133t, respectively, of Title 5, Executive Departments and Government Officers and Employees.

This section, which was derived from Act June 3, 1864, c. 106, 13 Stat. 99, is part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

Operation of diplomatic and consular establishments abroad. Section 103 of Act Aug. 5, 1953, c. 328, Title I, 67 Stat. 371, provided that: "The exchange of funds for payment of expenses in connection with the operation of diplomatic and consular establishments abroad shall not be subject to the provisions of this section".

Similar provisions were contained in Acts June 3, 1948, c. 400, Title I, § 105, 62 Stat. 316; July 20, 1949, c. 354, Title I, § 105, 63 Stat. 456; Sept. 6, 1950, c. 896, ch. III, Title I, § 104, 64 Stat. 615; Oct. 22, 1951, c. 533, Title I, 65 Stat. 581; July 10, 1952, c. 651, Title I, § 104, 66 Stat. 555.

Cross References. Traveler's checks in national parks or national monuments, see section 17d of Title 16, Conservation.

Withdrawal of gold coins from circulation, see section 315b of this title.

Acceptance of government checks by naval stores located abroad, see section 552 of Title 34, Navy.

§ 545. Expenses of fiscal agents

Words "sections 472, 474, 475, 480–484, 487, 490, 492, 495, 496, 498, 505–529, 543–545, 547a, 548, 549 of this title" should be substituted for "this chapter".

"Jan. 2" in last citation should be "Jan. 22."

§ 546. Appropriations for construction of public buildings; disbursement

Word "hereunder" should be stricken from text and "under this section" substituted.

5½. —— Under R. S. § 3659

The requirements of this statute relate only to a class of trusts which cannot be interfered with or disposed of by the executive power without further legislation. U. S. v. Bayard (1885) 4 Mackey (D. C.) 310.

Under this section trust moneys must be invested by the Secretary of the Treasury, and in all cases under the statute the securities therefor are to be retained by the Secretary, as he is to reinvest the interest. They cannot be sold and proceeds paid out without further authority of law. U. S. v. Bayard (1885) 4 Mackey (D. C.) 310.

"In making the investment of the proceeds of the sale of Indian lands (which sales were provided for by treaty stipulations) the President was required to make all such investments in United States stocks bearing interest at not less than five per cent. per annum." (1878) 16 Op. Atty. Gen. 31. See, also (1857) 9 Op. Atty. Gen. 44.

§ 547. Disposition of trust funds received from foreign governments for citizens of United States

Word "herein" should be stricken from the text and "in this section" inserted immediately following "provided for".

Functions relating to disbursement of moneys of United States, exercised by any agency, transferred to Fiscal Service of Treasury Department, see note under section 543 of this title.

Transfer of Public Buildings Branch of Procurement Division in the Treasury Department to the Federal Works Agency and to the Public Buildings Administration, see Reorg.Plan No. I, §§ 301, 303, eff. July 1, 1939, 4 Fed.Reg. 2729, 53 Stat. 1426, 1427, set out as note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Funds to be classified on books of Treasury as trust funds, see section 725s of this title.

§ 547a. Investment of trust funds. All funds held in trust by the United States, and the annual interest accruing thereon, when not otherwise required by treaty, shall be invested in stocks of the United States, bearing a rate of interest not less than 5 per centum per annum. (R. S. § 3659.)

Moneys received from foreign governments and other sources, in trust for citizens of United States or others, to be deposited and covered into the Treasury, see section 547 of this title.

See section 725s of this title.

§ 549. Examination of accounts of custodians of public moneys

This section originally used the words "naval officer of customs" instead of "comptroller of customs." Act Sept. 21, 1922, cited thereto, was the authority for the change. That Act has been repealed by section 651(a) (1) of the Tariff Act of 1930, constituting section 1651 of Title 19, but section 523 of said Act, constituting section 1523 of Title 19, provides that naval officers of customs shall continue to be known as comptrollers of customs.

The words "and surveyor" should be read into line 3 of this section before "as."

The words "the designated depositaries or" should be inserted after "upon" in line 4. The words "of each register of a land office, as a check upon the receiver of his land office;" should be inserted in line 4 before the word "and."

"Oct. 28, 1921, c. 114, § 1, 42 Stat. 208" should be omitted from citation.

"May 29, 1920, c. 214, § 1, 41 Stat. 655; June 17, 1930, c. 497, Title IV, § 523, 46 Stat. 740," should be added to citation.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The customs officials, and mint officials, referred to in this section, are all officials of the Treasury Department.

Acts Oct. 28, 1921, c. 114, § 1, 42 Stat. 208; Mar. 3, 1925, c. 462, 43 Stat. 1145, formerly set out respectively as sections 70 and 71 of Title 43, Public Lands, consolidated the offices of register and receiver of land offices having two officials, and authorized the appointment of a register for each such land office. For abolition of the offices of registers of land offices by Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1100, and transfer of their functions to Managers of district land offices under supervision of the Director of the Bureau of Land Management, see notes under section 1 of said Title 43.

Cross References. Offices of register and receiver of land offices having two officials consolidated, see section 71 of Title 43, Public Lands.

Offices of surveyors of customs and appraisers of merchandise abolished except in Port of New York, see section **5a of Title 19, Customs Duties.**

§ 550. Same; Coast and Geodetic Survey

The word "superintendent" in line 3 should read "Director."

"June 5, 1920, c. 265, § 1, 41 Stat. 929;" should be added to citation.

Transfer of Functions. The functions of all officers of the Department of Commerce and all functions of all officers and employees of such Department, were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 5, §§ 1, 2, eff. Mar. 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 591 of Title 5, Executive Departments and Government Officers and Employees. The Coast and Geodetic Survey, referred to in this section, is an agency within the Department of Commerce.

§ 551. Use of public moneys for expenses of conventions or other assemblages

Unless specifically provided by law, no moneys from funds appropriated for any purpose shall be used for the purpose of lodging, feeding, conveying, or furnishing transportation to, any conventions or other form of assemblage or gathering to be held in the District of Columbia or elsewhere. This section shall not be construed to prohibit the payment of expenses of any officer or employee of the Government in the discharge of his official duties. (Feb. 2, 1935, c. 4, 49 Stat. 19.)

4-H Boys and Girls Clubs to be allowed necessary expenses for assemblages notwithstanding this section, see section 552 of this title.

§ 552. Same; 4–H Boys and Girls Clubs

Nothing contained in section 551 of this title shall be construed to prohibit the Secretary of Agriculture from paying the necessary expenses for assemblages of the 4–H Boys and Girls Clubs, called by the Secretary of Agriculture in the District of Columbia or elsewhere, in the furtherance of the cooperative extension work of the Department. June 17, 1935, c. 271, 49 Stat. 387.

CHECK FORGERY INSURANCE FUND [NEW]

§ 561. Creation of fund; appropriations

There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, to be available until expended, to be used by the Treasurer of the United States, under the direction of the Secretary of the Treasury, for making settlement with the payees and special indorsees of certain checks drawn for the Treasurer of the United States, as hereinafter provided. There is hereby further authorized to be appropriated from time to time such additional sums as may be necessary for such purpose. There shall be on deposit with the Treasurer of the United States in a special deposit account a revolving fund, to be known as the check forgery insurance fund (hereinafter referred to

as "the fund"), to be composed of the sum of $50,000 and such further sums as may hereafter be appropriated from time to time, together with all recoveries deposited to the credit of the fund as hereinafter provided. Nov. 21, 1941, c. 489, § 1, 55 Stat. 777.

Effective date. Section 5 of Act Nov. 21, 1941, cited to text, provided as follows: "This Act [Title 31, §§ 561-564] shall take effect on the sixtieth day following the date of its enactment."

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 562. Payments from fund to payees, etc., of lost or stolen checks on United States paid on forged indorsements

Whenever it is established (a) that any check heretofore or hereafter drawn on the Treasurer of the United States has been lost or stolen, without the fault of the payee or a holder who is a special indorsee and whose indorsement is necessary to the further negotiation of such check, (b) that such check has thereafter been negotiated and paid by the Treasurer on a forged indorsement of the payee's or special indorsee's name, (c) that the payee or special indorsee has not participated either directly or indirectly in the proceeds of such negotiation or payment, and (d) that reclamation from the forger or transferees or parties on such check subsequent to the forgery has been or may be delayed or be unsuccessful, the Treasurer of the United States is authorized and directed to draw on the fund prior to reclamation to pay such payee or special indorsee the amount of such check, without interest. Nov. 21, 1941, c. 489, § 2, 55 Stat. 777.

Effective date of Act Nov. 21, 1941, cited to text, see note under section 561 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

Cross References. Duplicates for lost, stolen, mutilated etc., checks, see section 528 of this title.

§ 563. Criminal or civil liability of forger and subsequent indorsers; deposit of collections

Nothing contained in this subchapter shall be construed to relieve the forger from civil or criminal liability, nor to relieve any transferee or party on such check subsequent to the forgery from liability on his express or implied guaranty of prior indorsements, or liability to make refund to the Treasurer of the United States, and all amounts received by the Treasurer by way of reclamation from such persons, or other persons making repayment on behalf of such persons, to the extent that such amounts are necessary to reimburse the fund for payments made to payees or special indorsees therefrom shall forthwith be deposited to the credit of the fund and shall be available for the purposes thereof. Nov. 21, 1941, c. 489, § 3, 55 Stat. 778.

Effective date of Act Nov. 21, 1941, cited to text, see note under section 561 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

1. "Impostor rule"

Under "impostor rule", a drawer of a check cannot generally recover from an intermediary bank on its indorsement, or from payee bank on its payment if the check is drawn and delivered to an impostor under the mistaken belief of drawer that he is the person whose name he has assumed and to whose order the

check is made payable, and the intermediary bank acquires it from the impostor upon his indorsement thereon of the name of the payee, or the payee bank pays it on such indorsement and the rule may be applied to transactions of federal government, in a proper case. U. S. v. First Nat. Bank, Albuquerque, N. M., C. C.A.N.M.1942, 131 F.2d 985, certiorari denied 63 S.Ct. 830, 318 U.S. 774, 87 L.Ed. 1144.

§ 564. Rules and regulations

The Secretary of the Treasury shall have the power to make such rules and regulations as he may deem necessary or proper for the administration of the provisions of this subchapter. Nov. 21, 1941, c. 489, § 4, 55 Stat. 778.

Effective date of Act Nov. 21, 1941, cited to text, see note under section 561 of this title.

CHAPTER 11.—APPROPRIATIONS

GENERAL PROVISIONS

Sec.
581a. Notes and tables to explain changes made in form of Budget [New].
581b. Prior approval by agency head of requests for legislation authorizing appropriations [New].
581c. Adjustment of appropriations in connection with reorganizations [New].
(a) Transfer of functions between agencies in the same department or establishment.
(b) Transfer of functions between departments or establishments.
607. [New; Repealed].
609a. [New; Repealed].
610a. [New; Repealed].
634a. Adjustment of unpaid balances in Navy pay accounts between appropriations [New].
634b. Adjustment of unpaid balances in Defense Department military pay accounts between appropriations [New].
640a. Same; credited with proceeds of sales [New].
640b. Same; charges for Naval Reserve [New].
644a. Same; printing stock calalogue [New].
649a. Appropriations of Air Force, Army, and Navy available for pay and allowances of prisoners of war and similar persons [New].
649b. Availability of military appropriations for acquisition of copyrights, patents, licenses, designs, etc., and litigation releases [New].
650a. Appropriations for travel of Military Establishment and Department of the Army personnel; charged with expenses of personnel relieved from duty while traveling under orders [New].
650b. Travel expenses of Department of the Army personnel attending technical, scientific, etc., meeting [New].
650c. Limitation on land-purchase commission payments made from Defense Department appropriations [New].
663a. Appropriation for salaries of certain judicial officers; other uses prohibited; payment [New].
668a. Metered services extending beyond fiscal year, appropriation chargeable [New].
671a. Same; restrictions on use of Senate contingent appropriations for personal expenses [New].
680a. Long distance telephone tolls; payment from appropriations [New].
686—1. Same; available period of funds withdrawn and credited [New].
686a. Materials or services ordered from Navy; payment [New].
686b. Former § 686 effective as to funds transferred prior to amendment; convict labor; new provisions as additions to laws relating to working funds [New].
686c. Repealed.
689. Appropriations under control of Architect of Capitol; availability for expenses of advertising [New].
690. Collections under lapsed appropriations covered into Treasury as miscellaneous receipts [New].
691. Independent offices appropriations available for expenses of certain committees, boards, and interagency groups [New].
692. Department of Interior appropriations; availability for certain administrative expenses [New].
693. Same; availability for payment of property damages [New].
694. [New; Repealed].
695. Post Office Department appropriations; conditions precedent to withdrawal from general fund of Treasury [New].
696. Executive branch appropriations; availability for discharge of national defense responsibilities; transfer between appropriations or allocations [New].

PERMANENT ANNUAL APPROPRIATIONS

712a. Balances of appropriations; expenditure [New].
712b. Same; carried over to "Payment of certified claims" fund; appropriations inapplicable to; surplus [New].
712c. Payment of certified claims, appropriation [New].
713a. Same; entries on books for settlement of accounts of disbursing officers [New].
723. Appropriations for advance planning of public works [New].
724. Utilization of foreign credits authorized in general appropriation Acts [New].

PERMANENT APPROPRIATIONS REPEAL [New]

725. Permanent Appropriations Repeal Act; appropriations repealed.
725a. Same.
725b. Same.
725c. Same.

Sec.
725d. Same.
725e. Same.
725f. Same.
725g. Same.
725h. Same.
725i. Repealed.
725j. Same.
725k. Same.
725l. Same [Omitted].
725m. Same [Omitted].
725n. Same.
725o. Same.
725p. Same; trust funds.
725p—1. Payments of unclaimed moneys; appropriations [New].
725q. Appropriation accounts abolished.
725q—1. Refund of moneys erroneously received and covered; appropriation [New].
725q—2. Refund of forfeited bail in criminal actions; availability of appropriations [New].
725r. Fees deposited in Treasury.
725s. Same; trust funds.
725s-1. Indian irrigation projects; deposit of assessments as trust fund; disposition of funds [New].
725s-2. Same; amounts creditable to fund [New].
725s-3. Same; appropriation and disposition of power revenues [New].
725s—4. Commissary Funds, Federal Prisons; acceptance of gifts and bequests; exemption from tax [New].
725t. Checks drawn on Treasurer of United States; when payable; deposit of amount of unpaid checks.
725u. Provision authorizing advancement of money for township surveys repealed.
725v. Moneys in registry of any United States courts; disposition; disposition of all fees and other collections; exceptions.
725w. Survey of inactive and permanent appropriations by Comptroller General; report.
725x. Existing authorizations unaffected.
725y. Repeal of inconsistent provisions.
725z. Short title.

In connection with provisions of this chapter relating to procurement, warehousing, and distribution of property, stores, supplies, etc., see Executive Order 6166, § 1, set out in note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

GENERAL PROVISIONS

§ 581. Contents of proposed appropriations and statements of expenditures and estimates; information as to personal services and other objects; waiver

(a) Except as otherwise provided in sections 1, 2, 11, 13–24, 41–47, 51–55, 71, 471, 581, and 581a of this title, the contents, order, and arrangement of the proposed appropriations and the statements of expenditures and estimated expenditures contained in the Budget or transmitted under section 14 of this title, and the notes and other data submitted therewith, shall conform to requirements prescribed by the President.

(b) The Budget, and statements furnished with any proposed supplemental or deficiency appropriations, shall be accompanied by information as to personal services and other objects of expenditure in the same manner and form as in the Budget for the fiscal year 1950: *Provided*, That this requirement may be waived or modified, either generally or in specific cases, by joint action of the committees of Congress having jurisdiction over appropriation: *And provided further*, That nothing in sections 1, 2, 11, 13–24, 41–47, 51–55, 71, 471, 581, and 581a of this title shall be construed to limit the authority of committees of Congress to request and receive such information in such form as they may desire in consideration of and action upon budget estimates. As amended Sept. 12, 1950, c. 946, Title I, pt. I, § 102(c), 64 Stat. 833.

1950 Amendment. Subsec. (a) amended by Act Sept. 12, 1950, cited to text, which substituted "proposed" for "estimates of", and provided that, except as otherwise provided by the sections enumerated, the contents, order and arrangement of the proposed appropriations and statements of expenditures contained in the Budget shall conform to requirements prescribed by the President, rather than, as formerly provided, to the requirements of existing laws.

Subsec. (b) amended by Act Sept. 12, 1950, cited to text, which substituted entirely new provisions in lieu of the former provisions relating to statements to accompany estimates for lump-sum appropriations contained in the Budget or transmitted under section 14 of this title.

Repeals. R. S. § 3666, set out in the historical note to this section, was repealed by Act Mar. 3, 1933, c. 202, § 1, 47 Stat. 1430.

Transfer of Functions. All functions of all other officers of the Department of Justice, and all functions of all agencies and employees of such Department, were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in note under section 291 of Title 5, Executive Departments and Government Officers and Employees. The Immigration and Naturalization Service, referred to in par. (23) of this section, is an agency of the Department of Justice.

Change in appropriation title as affecting expenditures. Section 302(b) of Act

Sept. 12, 1950, Title III, cited to text, provided: "Whenever any law authorizes expenditures for a particular object or purpose to be made from an appropriation item referred to in such law by the specific title theretofore used for that appropriation item in the appropriation Act concerned, and thereafter such title is changed or is eliminated from such appropriation Act, expenditures for such object or purpose thereafter may be made from any corresponding appropriation item."

Legislative History: For legislative history and purpose of Act Sept. 12, 1950, see 1950 U.S.Code Cong.Service, p. 3707.

§ 581a. Notes and tables to explain changes made in form of Budget

Whenever any basic change is made in the form of the Budget, the President, in addition to the Budget, shall transmit to Congress such explanatory notes and tables as may be necessary to show where the various items embraced in the Budget of the prior year are contained in the new Budget. June 10, 1921, c. 18, § 205, 42 Stat. 21, amended Sept. 12, 1950, c. 946, Title I, pt. I, § 102(d), 64 Stat. 833.

1950 Amendment. Act Sept. 12, 1950, cited to text, amended section by eliminating the language pertaining to the alternative Budget for the fiscal year, 1923, and by inserting the provisions requiring the submission, whenever a basic change is made in the form of the Budget, of explanatory notes and tables as may be necessary to show where the various items embraced in the Budget of the prior year are contained in the new Budget.

§ 581b. Prior approval by agency head of requests for legislation authorizing appropriations

No requests for legislation, which, if enacted, would authorize subsequent appropriations for a department or establishment in the executive branch of the Government, shall be transmitted to the Bureau of the Budget, to the President, or to the Congress by such department or establishment, or by any organization unit thereof, without the prior approval of the head of such department or establishment. Sept. 12, 1950, c. 946, Title II, § 201, 64 Stat. 838.

§ 581c. Adjustment of appropriations in connection with reorganizations—Transfer of functions between agencies in the same department or establishment

(a) When under authority of law a function or an activity is transferred or assigned from one agency within any department or establishment to another agency in the same department or establishment, the balance of appropriations which are determined by the head of such department or establishment to be available and necessary to finance or discharge the function or activity so transferred or assigned may, with the approval of the President, be transferred to, and be available for use by, the agency to which said function or activity is transferred or assigned for any purpose for which said funds were originally available. Balances so transferred shall be credited to any applicable existing appropriation account or accounts, or to any new appropriation account or accounts, which are hereby authorized to be established, and shall be merged with funds in the applicable existing or newly established appropriation account or accounts and thereafter accounted for as one fund.

Transfer of functions between departments or establishments

(b) When under authority of law a function or activity is transferred or assigned from one department or establishment to another department or establishment, the balance of appropriations which are determined by the President to be available and necessary to finance or discharge the function or activity so transferred or assigned, shall be transferred to and be available for use by the department or establishment to which said function or activity is transferred or assigned for any purpose for which said funds were originally available. Balances so transferred shall be credited to any applicable existing appropriation account or accounts, or to any new appropriation account or accounts, which are authorized to be established, and shall be merged with funds in the applicable existing or newly established appropriation account or accounts and thereafter accounted for as one fund. Sept. 12, 1950, c. 946, Title II, § 202, 64 Stat. 838.

§§ 582–591. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(1)–(29), 64 Stat. 838

Section 583 was amended by Acts Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 10, 1921, c. 18, 42 Stat. 20; May 29, 1928, c. 901, § 1, 45 Stat. 986, 987, 990; June 30, 1932, c. 314, § 501, 47 Stat. 415; Mar. 3, 1933, c. 212, Title II, § 16, 47 Stat. 1518; Ex. Ord. No. 6084, Mar. 27, 1933; Ex. Ord. No. 6166, § 14, June 10, 1933; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238; May 23, 1944, c. 202, § 3, 58 Stat. 226; July 1, 1944, c. 373, Title VII, § 713, 58 Stat. 714, renumbered Aug. 13, 1946, c. 958, § 5, 60 Stat. 1049, rerenumbered Feb. 28, 1948, c. 83, § 9(b), 62 Stat. 47; 1946 Reorg. Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097. Par. (27) of such section, Act Sept. 8, 1916, c. 464, § 1, 39 Stat. 821, which related to estimates of miscellaneous expenses of the United States Employees' Compensation Commission, had been added to this section, but later omitted as superseded by said 1946 Reorg. Plan No. 2, § 3.

Section 588 was amended by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Additional repeal. Sections 588 and 589 were also repealed by Act Sept. 23, 1950, c. 1010, § 6, 64 Stat. 986.

Savings Clauses. Act Sept. 12, 1950, c. 946, Title III, § 302(c) (d), 64 Stat. 845, provided:

"(c) Except where authority for performance of a function is specifically repealed in section 301 [of Act Sept. 12, 1950, c. 946, Title III, 64 Stat. 845], none of the provisions of such section shall be construed as affecting the jurisdiction or responsibility of any agency or officer of the Government over any function or organizational unit referred to in such section.

"(d) Existing laws, policies, procedures, and directives pertaining to functions covered by this Act [sections 2, 11, 14, 16, 18a, 18b, 22-24, 65-65b, 66-66d, 67, 581-581c and 847 of this title], and not inconsistent herewith or repealed hereby, shall remain in full force and effect unless and until superseded, or except as they may be amended, under the authority of this Act [said sections] or under other appropriate authority."

Section 301, referred to in such section 302(c), repealed sections 12, 582-591, 594, 597, 598, 600-607, 609-622, 626, 629, 630, 633, 636, 637, 648, 649, 650, 655-657, 664, 674-677, 681, 683, 684, 687, 688, 694 of this title, sections 157, 558a, 782, 947 of Title 5, section 214 of Title 10, section 25 of Title 32, section 37 of Title 44, and section 1456 of Title 48, and repealed certain provisions contained in sections 624, 719 of this title, sections 118c, 730, 785 of Title 5, section 1597 of Title 10, section 452 of Title 16, section 504 of Title 34, and section 769 of Title 39, all of such repealed provisions having related, for the most part, to the compilation of estimates and the furnishing of certain financial data.

§§ 592, 593. Repealed. May 29, 1928, c. 901, § 1, 45 Stat. 986, 987.

These sections were repealed by Act May 29, 1928, c. 901, § 1, 45 Stat. 986, 987, which provides, "That the following reports and statements now required by law to be made to Congress are hereby discontinued, and all Acts or parts of Acts herein cited as requiring the submission of such statements and reports are hereby repealed to the extent of such requirement: * * * 11. Statement relative to the number of employees in each bureau and office, and the salary of each who are below a fair standard of efficiency. (Statutes at Large, volume 26, page 268; title 31, section 592, United States Code.)"

"10. Statement as to the condition of business in each department and independent establishment, showing whether any part of the same is in arrears, and so forth. (Statutes at Large, volume 28, page 808; title 31, section 593, United States Code.)"

§ 594. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(30), 64 Stat. 840

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in this former section, as affected by its repeal, see note under former sections 582-591 of this title.

§§ 595, 596. Repealed. May 29, 1928, c. 901, § 1, 45 Stat. 986.

These sections were repealed by Act May 29, 1928, c. 901, § 1, 45 Stat. 986, which provides, "That the following reports and statements now required by law to be made to Congress are hereby discontinued, and all Acts or parts of Acts herein cited as requiring the submission of such statements and reports are hereby repealed to the extent of such requirement: * * * 6. A statement of the buildings rented within the District of Columbia for the use of the Government, and so forth. (Statutes at Large, volume 22, page 552; Statutes at Large, volume 27, page 199; Statutes at Large, volume 38, part 1, page 3; Statutes at Large, volume 41, part 1, page 691; title 31, section 595, United States Code." "7. A statement given for each of the Government-owned buildings in the District of Columbia under the jurisdiction of each department and independent establishment, the location and valuation of each building, the purpose or purposes for which used, and the cost of care, maintenance, upkeep, and operation thereof. (Statutes at Large, volume 41, part 1, page 945; title 31, section 596, United States Code.)"

§§ 597, 598. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(31)(32), 64 Stat. 840

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in these former sections, as affected by their repeal, see note under former sections 582-591 of this title.

§ 599. Repealed. Aug. 7, 1946, c. 770, § 1(47), 60 Stat. 870.

§§ 600–607. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(33)–(42), 64 Stat. 840

Section 600 was amended by Act Aug. 4, 1949, c. 393, §§ 1, 20, 63 Stat. 495, 651.

Section 601 was amended by Act June 10, 1921, c. 18, § 215, 42 Stat. 23.

Section 603 was amended by Acts Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100; Feb. 23, 1931, c. 276, § 7, 46 Stat. 1207. Said Act Feb. 23, 1931 redesignated section 1 of Act May 24, 1924, c. 182, 43 Stat. 140, cited to text of section 603, as section 8.

Section 604 was amended by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Section 607, Act Aug. 4, 1886, c. 902, § 1, 24 Stat. 245, 246, related to estimates for the Army and Navy Hospital Service.

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in these former sections, as affected by their repeal, see note under former sections 582–591 of this title.

§§ 609–622. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(43)–(60) (83) (98) (99), 64 Stat. 841, 843

Section 609a, Act Mar. 3, 1909, c. 255, 35 Stat. 754, related to estimates for "Pay of the Navy".

Section 610a, Act June 9, 1896, c. 386, 29 Stat. 316, related to estimates for the money-order branch of the postal service.

Section 617 was amended by Act May 29, 1928, c. 901, § 1(69), 45 Stat. 992.

Section 618 was amended by Acts May 29, 1928, c. 901, § 1(106), 45 Stat. 994; Aug. 4, 1949, c. 393, §§ 1, 20, 63 Stat. 496, 561.

Section 619 was amended by 1939 Reorg. Plan No. II, § 4(e) (f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232.

Section 621 was repealed by Act Sept. 26, 1950, c. 1049, § 13(6), 64 Stat. 1041.

§ 624. Same; statements accompanying

The Bureau of the Budget shall annex to the annual estimates of the appropriations required for the public service, a statement of the appropriations for the service of the year, which may have been made by former Acts. R.S. § 3670; June 10, 1921, c. 18, §§ 204, 207, 42 Stat. 21, 22; Sept. 12, 1950, c. 946, Title III, § 301(86), 64 Stat. 843.

1950 Amendment. Act Sept. 12, 1950, cited to text, by repealing Act Mar. 3, 1875, c. 129, § 3, 18 Stat. 370, formerly cited to text, struck out the former requirement that the Bureau of the Budget submit, as a part of the appendix to the estimates, such extracts from the annual reports of the several heads of departments and bureaus as relate to estimates for appropriations, and the necessity therefor.

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in former provisions of this section, as affected by their repeal by Act Sept. 12, 1950, cited to text, see note under former sections 582–591 of this title.

Legislative History: For legislative history and purpose of Act Sept. 12, 1950, see 1950 U.S.Code Cong.Service, p. 3707.

§ 625. Statement of proceeds of sales of old material. [Repealed.]

This section is repealed by Act May 29, 1928, c. 901, § 1, 45 Stat. 986, 987, which provides, "That the following reports and statements now required by law to be made to Congress are hereby discontinued, and all Acts or parts of Acts herein cited as requiring the submission of such statements and reports are hereby repealed to the extent of such requirement: * * * 17. Statement of proceeds of sale of old material, condemned stores, supplies, and other property. (Statutes at Large, volume 36, part 1, page 773; title 31, section 625, United States Code.)"

§ 626. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(61) (62), 64 Stat. 842

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in this former section, as affected by its repeal, see note under former sections 582–591 of this title.

§ 627. Construction of appropriation Acts

Words "passed after June 30, 1906," should be inserted after "Congress" in line 1.

Contracts authorized to limit of cost fixed by Congress though appropriation is made in part only, see section 261 of Title 40, Public Buildings, Property, and Works.

See, also, section 12 of Title 41, Public Contracts.

§§ 629, 630. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(63) (64), 64 Stat. 842

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in these former sections, as affected by their repeal, see note under former sections 582–591 of this title.

§ 631. Drafts for Army and Navy Departments

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Cross References. Requisitions for advances of money not to be countersigned in General Accounting Office, see section 76 of this title.

§ 632. Repealed. Aug. 17, 1950, c. 735, § 10(a) (2), 64 Stat. 462

Section now covered by sections 794–794f of Title 39, The Postal Service.

Effective date. Repeal as effective on the nineteenth day following Aug. 17, 1950, see note set out under section 794 of Title 39, The Postal Service.

§ 633. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(65), 64 Stat. 842

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in this former section, as affected by its repeal, see note under former sections 582–591 of this title.

§ 634a. Adjustment of unpaid balances in Navy pay accounts between appropriations

Upon certification to the Comptroller General and the Secretary of the Treasury by the Bureau of Supplies and Accounts on transfer and counterwarrants of the net amount of the unpaid and overpaid balances occurring in the individual pay accounts of naval personnel on the last day of any fiscal year, such net amount shall be charged against the appropriation for the fiscal year in which such balances occurred, and from which such amount was payable, and shall be credited to and payable from the corresponding appropriation for the next succeeding fiscal year. Feb. 9, 1946, c. 2, 60 Stat. 3.

§ 634b. Adjustment of unpaid balances in Defense Department military pay accounts between appropriations

Hereafter, provisions of section 634a of this title, shall be applicable to the appropriations of the Department of Defense for military pay for the current fiscal year, upon certification by the appropriate agency of the department concerned. Aug. 1, 1953, c. 305, Title VI, § 621, 67 Stat. 353.

Legislative History: For legislative history and purpose of Act Aug. 1, 1953, see 1953 U.S.Code Cong. and Adm.News, p. —.

§§ 636, 637. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(66) (67), 64 Stat. 842

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in these former sections, as affected by their repeal, see note under former sections 582–591 of this title.

§ 638. Restrictions upon appropriations for ordnance or ordnance material or material purchased therewith

No money appropriated for ordnance or ordnance material or material purchased therewith for the Navy shall be used for any other purpose than that for which the appropriation was made, except that this provision shall not prohibit the transfer to other bureaus or departments of used or obsolescent material which is no longer needed for the purpose for which originally acquired: *Provided*, That nothing in this section shall be construed as preventing the allocation of armor, armament, ammunition, ordnance material, equipment, and accessories to ships according to the requirements of the naval service. July 1, 1918, c. 114, 40 Stat. 721; July 12, 1921, c. 44, § 1, 42 Stat. 128; Feb. 20, 1929, c. 274, 45 Stat. 1249.

The amendment by Act Feb. 20, 1929, cited to text, affected that part of the section preceding the proviso.

§ 639. Credit to appropriation "Pay miscellaneous" of premiums from sale of exchange. [Repealed.]

This section (Act Mar. 3, 1893, c. 212, 27 Stat. 716) was repealed by Act June 26, 1934, c. 756, § 16, 48 Stat. 1230. See section 725o of this title.

§ 640a. Same; credited with proceeds of sales

The clothing and small-stores fund shall be credited with the net proceeds of all sales (including sales of surplus materials) of clothing and small stores. (May 21, 1926, c. 355, 44 Stat. 605.)

§ 640b. Same; charges for Naval Reserve

The clothing and small-stores fund shall be charged with the value of all issues of clothing and small stores made to aviation cadets and enlisted men of the Naval Reserve and the uniform gratuity paid to officers and aviation cadets of the Naval Reserve. (April 27, 1937, c. 140, § 1, 50 Stat. 107; April 26, 1938, c. 175, § 1, 52 Stat. 235; May 25, 1939, c. 149, § 1, 53 Stat. 769.)

For prior enactments containing similar provision, see former appropriation acts.

§ 641. Repealed. Oct. 31, 1951, c. 654, § 1 (55), 65 Stat. 703

Act June 30, 1890, c. 640, 26 Stat. 605, which also had been cited as one of the sources of this section, was not repealed, but it related only to supplies purchased with moneys appropriated by that act.

§ 642. "Naval Supply Account"; purchases charged to; payments from "General Account of Advances," returned

"§ 1" should be inserted after "385" in first citation.

§ 644. Naval stock fund; charges against

There shall be a naval stock fund, which shall be charged with the cost of all stores procured for and credited with the value of all issues or sales made from the naval supply account. Deficiencies under appropriations for the Naval Establishment for the fiscal year 1920 and prior years shall be charged to this fund, to which shall be transferred the unexpended balances of annual appropriations for the Naval Establishment for the fiscal years 1919 and 1920. As amended July 3, 1942, c. 484, 56 Stat. 646.

Act July 3, 1942, cited to text, redesignated the naval supply account fund to be the naval stock fund.

Transfer to naval procurement fund of existing obligations not representing acquisition of materials for stock, see note under section 645a of this title.

§ 644a. Same; printing stock catalogue

The cost of printing a Federal standard stock catalogue, and changes therein, when compiled and adopted by such Federal agency as may be designated by the President, shall be charged to the "Naval Stock Fund", and this fund shall be reimbursed, when copies are issued to the several departments and establishments, from the appropriations available for the procurement of supplies. Mar. 2, 1929, c. 483, 45 Stat. 1461, as amended July 3, 1942, c. 484, 56 Stat. 646.

Act July 3, 1942, cited to text, redesignated the naval supply account fund to be the naval stock fund.

§ 645a. Naval procurement fund; establishment; expenditures; reimbursement of fund from appropriations chargeable; adjustment of accounts

Codification. Section has been transferred to section 172e of Title 5, Executive Departments and Government Officers and Employees.

Termination of fund. That part of Act June 22, 1944, c. 269, § 1, 58 Stat. 310 which provided for the termination of the Naval Procurement Fund after the end of World War II was repealed by Act July 26, 1947, c. 343, Title IV, § 406(e) as added by Act Aug. 10, 1949, c. 412, § 11, 63 Stat. 585.

§§ 648, 649. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(68) (69), 64 Stat. 842

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in these former sections, as affected by their repeal, see note under former sections 582–591 of this title.

§ 649a. Appropriations of Air Force, Army, and Navy available for pay and allowances of prisoners of war and similar persons

Any appropriation available to the Air Force, Army, or the Navy may, under such regulations as the Secretary concerned may prescribe, be used for expenses incident to the maintenance, pay, and allowances of prisoners of war, other persons in Air Force, Army, or Navy custody whose status is determined by the Secretary concerned to be similar to prisoners of war, and persons detained in such custody pursuant to Presidential proclamation. Aug. 1, 1953, c. 305, Title VI, § 610, 67 Stat. 350.

Similar provisions. Text of this section was taken from the Department of Defense Appropriation, 1953. Similar provisions were carried on the following prior appropriation Acts:

1952—July 10, 1952, c. 630, Title VI, § 612, 66 Stat. 532.
1951—Oct. 18, 1951, c. 512, Title VI, § 612, 65 Stat. 146.
1950—Sept. 6, 1950, c. 896, ch. X, Title VI, § 614, 64 Stat. 753.
1949—Oct. 29, 1949, c. 787, Title VI, § 616, 63 Stat. 1020.
1948—June 24, 1948, c. 632, § 12, 62 Stat. 669.
1947—July 30, 1947, c. 357, Title I, § 12, 61 Stat. 572.
1946—July 16, 1946, c. 583, § 13, 60 Stat. 565.
1945—July 3, 1945, c. 265, § 15, 59 Stat. 406.
1944—June 28, 1944, c. 303, § 15, 58 Stat. 595.
1943—July 1, 1943, c. 185, § 15, 57 Stat. 369.
1942—July 2, 1942, c. 477, § 14, 56 Stat. 633.
1941—Dec. 17, 1941, c. 591, Title I, § 103, 55 Stat. 813.

Legislative History: For legislative history and purpose of Act Aug. 1, 1953, see 1953 U.S.Code Cong. and Adm.News, p. —.

For legislative history and purpose of Act Oct. 18, 1951, see 1951 U.S.Code Cong. Service, p. 1781.

§ 649b. Availability of military appropriations for acquisition of copyrights, patents, licenses, designs, etc., and litigation releases

Appropriations for the military departments available for procurement or manufacture of supplies, equipment, and materials shall hereafter be available for the purchase or other acquisition of (a) copyrights, letters patent, applications for letters patent, (b) licenses under copyrights, under letters patent, and under applications for letters patent, and (c) designs, processes, and manufacturing data; and shall also be available for the purchase or other acquisition of releases, before suit is brought, for past infringement of letters patent. Any such purchase or other acquisition shall pertain to supplies, equipment, materials, or processes produced or used by or for, or useful to, the department concerned. Aug. 1, 1953, c. 305, Title VI, § 609, 67 Stat. 350.

Legislative History: For legislative history and purpose of Act Aug. 1, 1953, see 1953 U.S.Code Cong. and Adm.News, p. —.

§ 650. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(70), 64 Stat. 842

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in this former section, as affected by its repeal, see note under former sections 582–591 of this title.

§ 650a. Appropriations for travel of Defense Department personnel to be charged with expenses of personnel relieved from duty while traveling under orders

Hereafter, appropriations for the Department of Defense otherwise available for travel or transportation which are current on date of relief from duty station of personnel traveling under orders may be charged with all expenses in connection with such travel including transportation of dependents and household effects, regardless of time of arrival at destination of such personnel. Aug. 1, 1953, c. 305, Title VI, § 604, 67 Stat. 349.

Similar Provisions. Substantially similar provisions, on a fiscal year basis, were contained in the following prior appropriation acts:

1948—June 24, 1948, c. 632, 62 Stat. 652
1947—July 30, 1947, c. 357, Title I, § 1, 61 Stat. 554
1947—July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501
1946—July 16, 1946, c. 583, § 1, 60 Stat. 545
1945—July 3, 1945, c. 265, § 1, 59 Stat. 388
1944—June 28, 1944, c. 303, § 1, 58 Stat. 577
1943—July 1, 1943, c. 185, § 1, 57 Stat. 351
1942—July 2, 1942, c. 477, § 1, 56 Stat. 614

1941—June 30, 1941, 6:20 p.m., E.S.T., c. 262, § 1, 55 Stat. 371.
1940—June 13, 1940, c. 343, § 1, 54 Stat. 356
1939—April 26, 1939, c. 88, § 1, 53 Stat. 598
1938—June 11, 1938, c. 347, § 1, 52 Stat. 647
1937—July 1, 1937, c. 423, § 1, 50 Stat. 448

Legislative History: For legislative history and purpose of Act Aug. 1, 1953, see 1953 U.S.Code Cong. and Adm.News, p. —.

§ 650b. Travel expenses of Defense Department personnel attending technical, scientific, etc., meetings

Hereafter, appropriations for the Department of Defense available for travel shall not be available for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations without the approval of the Secretary of the department concerned, or his designee for the purpose. Aug. 1, 1953, c. 305, Title VI, § 605, 67 Stat. 349.

Similar Provisions. Similar provisions, on a fiscal year basis, were contained in the following prior appropriation acts:
1948—June 24, 1948, c. 632, 62 Stat. 652
1947—July 30, 1947, c. 357, Title I, § 1, 61 Stat. 554
1947—July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501
1946—July 16, 1946, c. 583, § 1, 60 Stat. 545
1945—July 3, 1945, c. 265, § 1, 59 Stat. 388
1944—June 28, 1944, c. 303, § 1, 58 Stat. 577

Legislative History: For legislative history and purpose of Act Aug. 1, 1953, see 1953 U.S.Code Cong. and Adm.News, p. —.

§ 650c. Limitation on land-purchase commission payments made from Defense Department appropriations

Hereafter, no part of any money appropriated to the Department of Defense in any Act shall be expended for the payment of any commission on any land purchase contract in excess of 2 per centum of the purchase price. Aug. 1, 1953, c. 305, Title VI, § 606, 67 Stat. 350.

Legislative History: For legislative history and purpose of Act Aug. 1, 1953, see 1953 U.S.Code Cong. and Adm.News, p. —.

§ 651. Disbursements; for Signal Corps [Superseded.]

This section has been superseded by Act June 5, 1920, c. 240, 41 Stat. 975. See sections 536, 537, and 538 of this title.

§ 652. Appropriations for Quartermaster Corps; no payment of extra-duty pay at West Point [Superseded.]

This section has been superseded by Act June 4, 1920, c. 227, § 4, 41 Stat. 761.

§ 653. Appropriations for horses; expenditures from

"351" in citation should be "363."

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

§ 655. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(71), 64 Stat. 843.

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in this former section, see note under former sections 582–591 of this title.

§ 656. Cost of transportation of material charged to appropriations for work in connection with which transportation charges required

The cost of transportation of material in connection with the manufacturing and purchasing activities of the Signal Corps, Ordnance Department, Chemical Warfare Service, Air Corps, Medical Department, Engineer Department, and the Coast Artillery Corps, and in connection with the construction and installation of fire-control projects at seacoast fortifications by the Coast Artillery Corps may be charged to the appropriations for the work in connection with which such transportation charges are required. Mar. 2, 1923, c. 178, Title I, 42 Stat. 1391; July 2, 1926, c. 721, § 1, 44 Stat. 780; Aug. 7, 1947, c. 512, Title V, § 507(d), 61 Stat. 894;

June 28, 1950, c. 383, Title III, § 307, 64 Stat. 270; Sept. 12, 1950, c. 946, Title III, § 301(72), 64 Stat. 843.

1950 Amendments. Act Sept. 12, 1950, amended section by repealing provisions, formerly at end of section, which required that the Budget estimates for each of the appropriations referred to should carry separately the amounts required for such transportation costs.

Act June 28, 1950, substituted "Army Medical Service" for "Medical Department".

1947 Amendment. Act Aug. 7, 1947, substituted "Chemical Corps" for "Chemical Warfare Service".

1926 Amendment. Act July 2, 1926, substituted "Air Corps" for "Air Service".

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in in former provisions of this section, as affected by their repeal by Act Sept. 12, 1950, cited to text, see note under former sections 582-591 of this title.

§ 657. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(73), 64 Stat. 843

Savings Clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in this former section, see note under former sections 582-591 of this title.

§ 661. Appropriation for Coast and Geodetic Survey; purchases from

Transfer of functions. The functions of all officers of the Department of Commerce and all functions of all officers and employees of such Department, were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg.Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 591 of Title 5, Executive Departments and Government Officers and Employees. The Coast and Geodetic Survey, referred to in this section, is an agency within the Department of Commerce.

§ 662. Appropriations for Fish and Wildlife Service; purchases from

The Secretary of Interior may purchase, to the extent of not to exceed $5,000, from the appropriations for the Fish and Wildlife Service, clothing and small stores for the crews of vessels, to be sold to the employees of said service and the appropriations reimbursed. July 1, 1918, c. 113, § 1, 40 Stat. 694; Reorg. Plan No. II, § 4 (e) (f), eff. July 1, 1939, 4 Fed.Reg. 2731, 53 Stat. 1433; Reorg. Plan No. III, § 3, June 30, 1940, 5 Fed.Reg. 2108, 54 Stat. 1232.

Transfer of Functions. All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg.Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in note under section 481 of Title 5, Executive Departments and Government Officers and Employees.

Bureau of Fisheries was consolidated with Bureau of Biological Survey into Fish and Wildlife Service in Department of Interior, and offices of Commissioner and Deputy Commissioner of Fisheries were abolished by Reorg. Plan No. III, § 3, eff. June 30, 1940, set out in note under section 133t of Title 5. See, also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds. The Bureau had been previously transferred to Department of Interior by Reorg. Plan No. II, § 4(e), eff. July 1, 1939, also set out in note under section 133t of Title 5.

§ 663. Expenditures for supplies for courts and judicial officers

Director of the Administrative Office of the United States courts to have charge of the disbursement of moneys appropriated for the maintenance, support and operation of the courts, see sections 602, 603, and 607 of Title 28, Judiciary and Judicial Procedure.

§ 663a. Appropriation for salaries of certain judicial officers; other uses prohibited; payment

After July 2, 1942, no part of the funds appropriated for salaries of judges, the Attorney General, Assistant Attorneys General, Solicitor General, district attorneys, marshals, and clerks of court shall be used for any other purpose whatsoever, but such salaries shall be allotted out of appropriations made for such salaries and retained by the Department or the Administrative Office of the United States Courts and paid to such officials severally, as and when such salaries fall due and without delay. July 2, 1942, c. 472, Title V, § 505, 56 Stat. 506.

§ 664. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(74), 64 Stat. 843

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in this former section, as affected by its repeal, see note under former sections 582–591 of this title.

§ 665. Appropriations—Expenditures or contract obligations in excess of funds prohibited

(a) No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law.

Voluntary service forbidden

(b) No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property.

Apportionment of appropriations; reserves; distribution; review

(c) (1) Except as otherwise provided in this section, all appropriations or funds available for obligation for a definite period of time shall be so apportioned as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such period; and all appropriations or funds not limited to a definite period of time, and all authorizations to create obligations by contract in advance of appropriations, shall be so apportioned as to achieve the most effective and economical use thereof. As used hereafter in this section, the term "appropriation" means appropriations, funds, and authorizations to create obligations by contract in advance of appropriations.

(2) In apportioning any appropriation, reserves may be established to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements, greater efficiency of operations, or other developments subsequent to the date on which such appropriation was made available. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the purposes of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations.

(3) Any appropriation subject to apportionment shall be distributed by months, calendar quarters, operating seasons, or other time periods, or by activities, functions, projects, or objects, or by a combination thereof, as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments. Except as otherwise specified by the officer making the apportionment, amounts so apportioned shall remain available for obligation, in accordance with the terms of the appropriation, on a cumulative basis unless reapportioned.

(4) Apportionments shall be reviewed at least four times each year by the officers designated in subsection (d) of this section to make apportionments and reapportionments, and such reapportionments made or such reserves established, modified, or released as may be necessary to further the effective use of the appropriation concerned, in accordance with the purposes stated in paragraph (1) of this subsection.

Officers controlling apportionment or reapportionment

(d) (1) Any appropriation available to the legislative branch, the judiciary, or the District of Columbia, which is required to be apportioned

under subsection (c) of this section, shall be apportioned or reapportioned in writing by the officer having administrative control of such appropriation. Each such appropriation shall be apportioned not later than thirty days before the beginning of the fiscal year for which the appropriation is available, or not more than thirty days after approval of the Act by which the appropriation is made available, whichever is later.

(2) Any appropriation available to an agency, which is required to be apportioned under subsection (c) of this section, shall be apportioned or reapportioned in writing by the Director of the Bureau of the Budget. The head of each agency to which any such appropriation is available shall submit to the Bureau of the Budget information, in such form and manner and at such time or times as the Director may prescribe, as may be required for the apportionment of such appropriation. Such information shall be submitted not later than forty days before the beginning of any fiscal year for which the appropriation is available, or not more than fifteen days after approval of the Act by which such appropriation is made available, whichever is later. The Director of the Bureau of the Budget shall apportion each such appropriation and shall notify the agency concerned of his action not later than twenty days before the beginning of the fiscal year for which the appropriation is available, or not more than thirty days after the approval of the Act by which such appropriation is made available, whichever is later. When used in this section, the term "agency" means any executive department, agency, commission, authority, administration, board, or other independent establishment in the executive branch of the Government, including any corporation wholly or partly owned by the United States which is an instrumentality of the United States. Nothing in this subsection shall be so construed as to interfere with the initiation, operation, and administration of agricultural price support programs and no funds (other than funds for administrative expenses) available for price support, surplus removal, and available under section 612(c) of Title 7, with respect to agricultural commodities shall be subject to apportionment pursuant to this section. The provisions of this section shall not apply to any corporation which obtains funds for making loans, other than paid in capital funds, without legal liability on the part of the United States.

Apportionment necessitating deficiency or supplemental estimates

(e) (1) No apportionment or reapportionment which, in the judgment of the officer making such apportionment or reapportionment, would indicate a necessity for a deficiency or supplemental estimate shall be made except upon a determination by such officer that such action is required because of (A) any laws enacted subsequent to the transmission to the Congress of the estimates for an appropriation which require expenditures beyond administrative control; or (B) emergencies involving the safety of human life, the protection of property, or the immediate welfare of individuals in cases where an appropriation has been made to enable the United States to make payment of, or contributions toward, sums which are required to be paid to individuals either in specific amounts fixed by law or in accordance with formulae prescribed by law.

(2) In each case of an apportionment or a reapportionment which, in the judgment of the officer making such apportionment or reapportionment, would indicate a necessity for a deficiency or supplemental estimate, such officer shall immediately submit a detailed report of the facts of the case to the Congress. In transmitting any deficiency or supplemental estimates required on account of any such apportionment or reapportionment, reference shall be made to such report.

Exemption of trust funds and working funds expenditures from apportionment

(f) (1) The officers designated in subsection (d) of this section to make apportionments and reapportionments may exempt from apportionments trust funds and working funds expenditures from which have no

significant effect on the financial operations of the Government, working capital and revolving funds established for intragovernmental operations, receipts from industrial and power operations available under law and any appropriation made specifically for—

(1) interest on, or retirement of, the public debt;

(2) payment of claims, judgments, refunds, and draw-backs;

(3) any item determined by the President to be of a confidential nature;

(4) payment under private relief Acts or other laws requiring payments to designated payees in the total amount of such appropriation;

(5) grants to the States under subchapters I, IV, or X of chapter 7 of Title 42, or under any other public assistance subchapter in such chapter.

(2) The provisions of subsection (c) of this section shall not apply to appropriations to the Senate or House of Representatives or to any Member, committee, Office (including the office of the Architect of the Capitol), officer, or employee thereof.

Administrative division of apportionment

(g) Any appropriation which is apportioned or reapportioned pursuant to this section may be divided and subdivided administratively within the limits of such apportionments or reapportionments. The officer having administrative control of any such appropriation available to the legislative branch, the judiciary, or the District of Columbia, and the head of each agency, subject to the approval of the Director of the Bureau of the Budget, shall prescribe, by regulation, a system of administrative control (not inconsistent with any accounting procedures prescribed by or pursuant to law) which shall be designed to (A) restrict obligations or expenditures against each appropriation to the amount of apportionments or reapportionments made for each such appropriation, and (B) enable such officer or agency head to fix responsibility for the creation of any obligation or the making of any expenditure in excess of an apportionment or reapportionment.

Expenditures in excess of apportionment prohibited; penalties

(h) No officer or employee of the United States shall authorize or create any obligation or make any expenditure (A) in excess of an apportionment or reapportionment, or (B) in excess of the amount permitted by regulations prescribed pursuant to subsection (g) of this section.

Administrative discipline; reports on violations

(i) (1) In addition to any penalty or liability under other law, any officer or employee of the United States who shall violate subsection (a), (b), or (h) of this section shall be subjected to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office; and any officer or employee of the United States who shall knowingly and willfully violate subsections (a), (b), or (h) of this section shall, upon conviction, be fined not more than $5,000 or imprisoned for not more than two years, or both.

(2) In the case of a violation of subsections (a), (b), or (h) of this section by an officer or employee of an agency, or of the District of Columbia, the head of the agency concerned or the Commissioners of the District of Columbia, shall immediately report to the President, through the Director of the Bureau of the Budget, and to the Congress all pertinent facts together with a statement of the action taken thereon. As amended Sept. 6, 1950, c. 896, ch. XII, § 1211, 64 Stat. 765.

References in Text. The Budget and Accounting Act of 1921, referred to in the text of subsection (c) (2) is classified to sections 1, 2, 11, 13–24, 41–43, and 44–56 of this Title.

1950 Amendment. Act Sept. 6, 1950, cited to text, amended section generally to require careful apportionment of all types of funds expended by Federal agencies and efficient administration of the Government's business.

Cross References. Administrator of Rural Electrification Administration empowered to accept and utilize voluntary and uncompensated services of Federal, State, and local officers and employees in carrying out his program, see section 911 of Title 7, Agriculture.

Functions of making, waiving, and modifying apportionments of appropriations as transferred to Director of the Bureau of the Budget, see Ex.Or. No. 6166, § 16, set out as note under section 132 of Title 5, Executive Departments, Government Officers and Employees.

Projects under Mexican treaties, authority to enter into contracts beyond amount appropriated, notwithstanding this section, see section 277d—3 of Title 22, Foreign Relations and Intercourse.

Removal of persons in classified civil service to be only for cause, see section 652 of Title 5, Executive Departments, Government Officers and Employees.

Unexpended balances of funds appropriated for other agencies to be available for expenditure by Maritime Commission without regard to requirement of apportionment under this section, see section 1119 of Title 46, Shipping.

Office of Scientific Research and Development. Contracts by such office for investigations or experiments may provide for indemnifying contractor out of subsequent appropriations against loss or damage to persons or property, under Acts July 25, 1942, c. 524, Title I, 56 Stat. 709; July 12, 1943, 3 p. m., E. W. T., c. 228, § 1, 57 Stat. 530; June 28, 1944, c. 301, Title I, § 1, 58 Stat. 540; July 17, 1945, c. 319, § 1, 59 Stat. 477.

Office of the Coordinator of Inter-American Affairs; Office of War Information. Contracts for use of international short-wave radio stations and facilities may provide for indemnity of owners and operators of such stations against loss or damage on account of injury to persons or property arising from use of such stations or facilities, under Acts Oct. 26, 1942, c. 629, Title II, 56 Stat. 996, 997; July 12, 1943, 3 p. m., E. W. T., c. 228, § 1, 57 Stat. 529, 532; June 28, 1944, c. 301, Title I, § 1, 58 Stat. 538, 539; July 17, 1945, c. 319, § 1, 59 Stat. 477.

Department of State. Contracts for use of international short-wave radio stations and facilities may provide for indemnity of owners and operators of such stations against loss or damage on account of injury to persons or property arising from use of such stations or facilities; Aug. 7, 1953, c. 340, ch. III, § 301, 67 Stat. 420.

Similar provisions conferring the authority on the Office of the Coordinator of Inter-American Affairs and Office of War Information were carried in Acts Oct. 26, 1942, c. 629, Title II, 56 Stat. 996, 997; July 12, 1943, 3 p. m., E. W. T.; c. 228, § 1, 57 Stat. 529, 532; June 28, 1944, c. 301, Title I, § 1, 58 Stat. 538, 539; July 17, 1945, c. 319, § 1, 59 Stat. 477; July 5, 1946, c. 541, Title I, 60 Stat. 447; July 9, 1947, c. 211, Title I, § 101, 61 Stat. 280; June 3, 1948, c. 400, Title I, § 101, 62 Stat. 312; July 20, 1949, c. 354, Title I, § 101, 63 Stat. 451; Sept. 6, 1950, c. 896, ch. III, Title I, § 101, 64 Stat. 614; Oct. 22, 1951, c. 533, Title I, § 101, 65 Stat. 581; July 10, 1952, c. 651, Title I, § 101, 66 Stat. 554.

11. Employment and compensation in general

Payment for the value of service rendered, under a misapprehension as to the terms of employment, does not affect the question as to the nature of the employment arrangement or agreement. Gorman v. U. S., 1945, 102 Ct.Cl. 260.

§ 666. Gratuitous services of members of Officers' Reserve Corps

See Executive Order June 10, 1933, No. 6166, § 16, set out in note under section 132 of Title 5.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

§ 667. Contracts for fuel for public buildings in advance of appropriations

Codification. Section is now set out as section 112a of Title 40, Public Buildings, Property, and Works.

§ 668. Contracts for fuel by Secretary of the Army without regard to current fiscal year

See Executive Order June 10, 1933, No. 6166, § 1, set out in note under section 132 of Title 5, Executive Department and Government Officers and Employees.

Transfer of Functions. Functions relating to procurement of supplies, etc., exercised by any other agency, transferred to Procurement Division of the Treasury Department by Ex. Ord. No. 6166, § 1, eff. June 10, 1933, set out in note under section 132 of Title 5, Executive Departments and Government Officers and Employees. Effective Jan. 1, 1947, the name of the Procurement Division of the Treasury Department was changed to the Bureau of Federal Supply by regulation § 5.7 of subpart A of Part 5 of Title 41, Public Contracts, 11 F.R. 13638, issued by the Secretary of the Treasury under the authority of section 22 of said Title 5.

Public Buildings Branch of Procurement Division transferred to Public Buildings Administration within Federal Works Agency, see Reorg. Plan No. I, §§ 301, 303, 4 Fed.Reg. 2729, 53 Stat. 1426, 1427, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

§ 668a. Metered services extending beyond fiscal year, appropriation chargeable

Hereafter, in making payments for commodities or services the quantity of which is determined by metered readings, such as gas, electricity, water, steam, and the like, and for telephone services, where the period covered by the charge begins in one fiscal year or allotment period and ends in

another, the entire amount of the payment may be regarded as a charge against the appropriation or allotment current at the end of such period. Apr. 27, 1937, c. 143, 50 Stat. 119, as amended Apr. 26, 1939, c. 103, 53 Stat. 624.

§ 669. Apportionment of contingent fund of departments to offices and bureaus

Functions of making, waiving, and modifying apportionments of appropriations transferred to Director of the Bureau of the Budget, see Ex.Ord.No.6166, § 16, set out as note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

§ 671a. Same; restrictions on use of Senate contingent appropriations for personal expenses

No part of any appropriation made for the contingent expenses of the Senate shall be used to defray the expenses of any person except the members of any congressional committee, the Sergeant at Arms of the Senate or a representative of his office, and except the widow or minor children or both of the deceased, to attend the funeral rites and burial of any person who at the time of his or her death was a Senator of the United States. Oct. 9, 1940, c. 780, Title I, 54 Stat. 1031.

§ 673. Use of public moneys or appropriations for compensation or expenses of commission; details from executive departments to such commission prohibited

1. Construction and operation

The employment of "special consultants" to study the operations of the Army Air Corps in conjunction with a group of Army officers and to join with them in a report and recommendations to the Secretary of War concerning needed improvements in equipment and training of personnel is not prohibited by this section. (1934) 37 Op.Atty.Gen. 484.

§§ 674–677. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(75)–(78), 64 Stat. 843

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in these former sections, as affected by their repeal, see note under former sections 582–591 of this title.

§ 678. Repealed. Aug. 2, 1946, c. 744, § 17(a), 60 Stat. 811.

§ 679. Expenditure from appropriations for private telephone service

Except as otherwise provided by law, no money appropriated by any Act shall be expended for telephone service installed in any private residence or private apartment or for tolls or other charges for telephone service from private residences or private apartments, except for long-distance telephone tolls required strictly for the public business, and so shown by vouchers duly sworn to and approved by the head of the department, division, bureau, or office in which the official using such telephone or incurring the expense of such tolls shall be employed: *Provided*, That the cost of installation and use of telephones in residences leased or owned by the Government of the United States in foreign countries for the use of the Foreign Service may be allowed from Government funds, under such regulations as may be prescribed by the Secretary of State, except that the restrictions in this section relating to long-distance tolls shall also apply to telephones installed in such official residences. As amended Apr. 30, 1940, c. 175, 54 Stat. 175.

§ 680. Same; Chief of Engineers; locks and dams

Hereafter the provisions of section 679 of this title, or any other law, prohibiting the expenditure of public money for telephone services installed in private residences, shall not be construed to apply to or forbid the installation and use of such telephones as the Chief of Engineers may certify to be necessary for the prosecution of Government business and as the Secretary of the Army may authorize in connection with the construction and operation of locks and dams for navigation, flood control, and related water uses: *Provided*, That not more than $30,000 shall be

expended for such telephone services in any one fiscal year. As amended July 26, 1947, c. 343, Title II, § 205 (a), 61 Stat. 501; May 17, 1950, c. 188, Title II, § 203, 64 Stat. 170.

1950 Amendment. Act May 17, 1950, cited to text, amended section by adding proviso.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, cited to text.

§ 680a. Long distance telephone tolls; payment from appropriations

Hereafter no part of any appropriation for any executive department, establishment, or agency shall be used for the payment of long-distance telephone tolls except for the transaction of public business which the interests of the Government require to be so transacted; and all such payments shall be supported by a certificate by the head of the department, establishment, or agency concerned, or such subordinates as he may specially designate, to the effect that the use of the telephone in such instances was necessary in the interest of the Government. May 10, 1939, c. 119, § 4, 53 Stat. 738.

§ 681. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(79), 64 Stat. 843

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in this former section, as affected by its repeal, see note under former sections 582–591 of this title.

§§ 683, 684. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(80) (81), 64 Stat. 843

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in these former sections, as affected by their repeal, see note under former sections 582–591 of this title.

§ 685. Lighthouses

Unexpended balance of permanent specific appropriation for lighthouses which has remained on books of Treasury for two fiscal years not required to be carried to surplus fund and covered into Treasury, see section 713 of this title.

§ 686. Purchase or manufacture of stores or materials or performance of services by bureau or department for another bureau or department

(a) Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual cost of the materials, supplies, or equipment furnished, or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned: *Provided*, That the Department of the Army, Navy Department, Treasury Department, Civil Aeronautics Administration, and the Maritime Commission may place orders, as provided herein, for materials, supplies, equipment, work, or services, of any kind that any requisitioned Federal agency may be in a position to supply, or to render or to obtain by contract: *Provided further*, That if such work or services can be as conveniently or more cheaply performed by private agencies such work shall be let by competitive bids to such private agencies. Bills rendered, or requests for advance payments made, pursuant to any such order, shall not be subject to audit or certification in advance of payment.

(b) Amounts paid as provided in subsection (a) shall be credited, (1) in the case of advance payments, to special working funds, or (2) in the case of payments other than advance payments, to the appropriations or funds against which charges have been made pursuant to any such order, except as hereinafter provided. The Secretary of the Treasury shall establish such special working funds as may be necessary to carry out the provisions of this subsection. Such amounts paid shall be available for expenditure in furnishing the materials, supplies, or equipment, or in performing the work or services, or for the objects specified in such appropriations or funds. Where materials, supplies, or equipment are furnished from stocks on hand, the amounts received in payment therefor shall be credited to appropriations or funds, as may be authorized by other law, or, if not so authorized, so as to be available to replace the materials, supplies, or equipment, except that where the head of any such department, establishment, bureau, or office determines that such replacement is not necessary the amounts paid shall be covered into the Treasury as miscellaneous receipts.

(c) Orders placed as provided in subsection (a) shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors. Advance payments credited to special working funds shall remain available to the procuring agency for entering into contracts and other uses during the fiscal year or years for which the appropriation involved was made and thereafter until said appropriation lapses under the law to the surplus fund of the Treasury. Mar. 4, 1915, c. 143, § 1, 38 Stat. 1084; May 21, 1920, c. 194, § 7, 41 Stat. 613; June 30, 1932, c. 314, § 601, 47 Stat. 417; June 22, 1936, c. 689, Title IV, § 8, 49 Stat. 1648; July 20, 1942, c. 507, 56 Stat. 661; June 26, 1943, c. 150, § 1, 57 Stat. 219; July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Subsec. (a) was amended generally by Act July 20, 1942, cited to text, which added first proviso.

Subsec. (c) was amended by Act June 26, 1943, cited to text, which substituted second sentence for provisions relating to issuance of stores from stock on hand.

Transfer of functions. The functions of all other officers of the Department of Commerce and all functions of all agencies and employees of such Department, were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg.Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 591 of Title 5, Executive Departments and Government Officers and Employees. The Civil Aeronautics Administration, referred to in this section, is an agency within the Department of Commerce.

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by 1949 Reorg. Plan No. 6, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1069. See note set out under section 1111 of Title 46, Shipping.

Functions relating to procurement of stores, supplies, etc., exercised by any other agency, transferred to Procurement Division, see Ex.Ord.No.6166, § 1, set out as note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

Abolishment of Commission and transfer of functions. The United States Maritime Commission was abolished by 1950 Reorg.Plan No. 21, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in note under section 1111 of Title 46, Shipping, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the chairman of said Federal Maritime Board should, ex officio, be such Administrator.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

Cross References. Availability of advance payments, see section 686c, post.

Orders or contracts for materials placed with Government-owned establishments deemed obligations, see section 23 of Title 41, Public Contracts.

1. Regulations

General Regulations of the General Accounting Office, which prescribe administrative procedure for adjustments between appropriations and/or funds "for general use through the Government service", are held to be invalid because in conflict with provisions of this section. (1934) 37 Op.Atty.Gen. 559.

§ 686—1. Same; available period of funds withdrawn and credited

No funds withdrawn and credited pursuant to section 686 of this title, shall be available for any period beyond that provided by the Act appropriating such funds. Sept. 6, 1950, c. 896, ch. XII, § 1210, 64 Stat. 765.

§ 686a. Materials or services ordered from Navy; payment. Any executive department or independent establishment of the Government ordering materials or services from the Navy shall pay promptly by check upon written request from the Paymaster General of the Navy, either in advance or upon completion of the work, all or part of the estimated or actual cost thereof, as the case may be, and bills rendered in accordance herewith shall not be subject to audit or certification in advance of payment: *Provided*, That proper adjustments on the basis of the actual cost of delivery of work paid for in advance shall be made. (May 21, 1926, c. 355, 44 Stat. 605.)

§ 686b. Former § 686 effective as to funds transferred prior to amendment; convict labor; new provisions as additions to laws relating to working funds

(a) Notwithstanding the provisions of this section and amendment of section 686 of this title, said section 686, as in force prior to June 30, 1932, shall remain in force with respect to the disposition of funds transferred thereunder prior to such date.

(b) Nothing in this section or section 686 shall be construed to authorize any Government department or independent establishment, or any bureau or office thereof, to place any orders for material, supplies, equipment, work, or services to be furnished or performed by convict labor, except as otherwise provided by existing law.

(c) The provisions of this section and section 686 are in addition to and not in substitution for the provisions of any other law relating to working funds. (June 30, 1932, c. 314, § 602, 47 Stat. 418.)

Availability of advance payments, see section 686c, post.

§ 686c. Repealed. L.1943, c. 150, § 2, eff. June 26, 1943.

Section, Act June 22, 1936, c. 689, Title IV, § 8, 49 Stat. 1648, related to availability of advance payments under section 686.

§ 687. Repealed. Oct. 31, 1951, c. 655, § 56 (g), 65 Stat. 729

Section, Acts Mar. 4, 1911, c. 237, § 1, 36 Stat. 1234; Mar. 2, 1929, c. 488, § 1, 45 Stat. 1475, related to regular submission to Congress of detailed statements of expenditure of appropriations for the United States Court of Customs and Patent Appeals.

Saving clause. Subsec. (*l*) of section 56 of Act Oct. 31, 1951, provided that the repeal of this section should not affect any rights or liabilities existing hereunder on the effective date of such repeal (Oct. 31, 1951).

§ 688. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(49) (83), 64 Stat. 841, 843

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in these former sections, as affected by their repeal, see note under former sections 582–591 of this title.

§ 689. Appropriations under control of Architect of Capitol; availability for expenses of advertising. Appropriations under the control of the Architect of the Capitol shall be available hereafter for expenses of advertising and personal and other services. (Feb. 28, 1929, c. 367, § 1, 45 Stat. 1395; June 6, 1930, c. 407, § 1, 46 Stat. 513.)

§ 690. Collections under lapsed appropriations covered into Treasury as miscellaneous receipts

Any collection which otherwise would be for depositing to the credit of an appropriation where such appropriation has lapsed and the balance reverted to the surplus fund shall be deposited for covering into the general fund of the Treasury as miscellaneous receipts. Apr. 25, 1945, c. 95, Title I, 59 Stat. 90.

§ 691. Independent offices appropriations available for expenses of certain committees, boards, and interagency groups

Appropriations of the executive departments and independent establishments of the Government shall be available for the expenses of committees, boards, or other interagency groups engaged in authorized activities of common interest to such departments and establishments and composed in whole or in part of representatives thereof who receive no additional compensation by virtue of such membership: *Provided*, That employees of such departments and establishments rendering service for such committees, boards, or other groups, other than as representatives, shall receive no additional compensation by virtue of such service. May 3, 1945, c. 106, Title II, § 214, 59 Stat. 134.

§ 692. Department of Interior appropriations; availability for certain administrative expenses

Appropriations for field work of the Department of the Interior shall be available for the hire, with or without personal services, of boats, work animals, and animal-drawn and motor-propelled vehicles and equipment. June 25, 1946, c. 472, § 1, 60 Stat. 708.

Congressional Comment: For legislative history and purpose of Act June 25, 1946, cited to text, see 1946 U.S.Code Cong.Service, p. 1210.

§ 693. Same; availability for payment of property damages

Appropriations for contingent expenses of the Department of the Interior shall be available, to the extent specified therein, for the payment of damages to private property (not to exceed $500 in any one case) caused by the negligent operation of motor vehicles under such appropriations. June 25, 1946, c. 472, § 2, 60 Stat. 708.

Congressional Comment: For legislative history and purpose of Act June 25, 1946, cited to text, see 1946 U.S.Code Cong.Service, p. 1210.

§ 694. Repealed. Sept. 12, 1950, c. 946, Title III, § 301(84), 64 Stat. 843

Section, Act May 26, 1947, c. 82, Title IV, § 400, 61 Stat. 118, related to appropriations for executive departments and establishments for personal services, and availability thereof for increased costs.

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in this former section, as affected by its repeal, see note under former sections 582–591 of this title.

§ 695. Post Office Department appropriations; conditions precedent to withdrawal from general fund of Treasury

Hereafter, none of the funds appropriated to the Post Office Department from the general fund of the Treasury shall be withdrawn from the Treasury until the Postmaster General shall certify in writing that he has requested the consent of the Interstate Commerce Commission to the establishment of such rate increases or other reformations (in addition to any specific increases or other reformations heretofore or hereafter authorized or prescribed by law), pursuant to the provisions of section 247 of Title 39, as may be necessary to insure the receipt of revenue from fourth-class mail service sufficient to pay the cost of such service: *Provided*, That the foregoing shall not be construed to require any increase in the postage rate, established by section 293c of Title 39, for publications or records furnished to a blind person. Sept. 27, 1950, c. 1052, ch. IV, § 101, 64 Stat. 1050.

§ 696. Limitation on use of appropriations by agencies or instrumentalities; existence of agencies, etc.; performance of functions of barred agencies, etc., by other agencies

After January 1, 1945, no part of any appropriation or fund made available by this or any other Act shall be allotted or made available to, or used to pay the expenses of, any agency or instrumentality including those established by Executive order after such agency or instrumentality has been in existence for more than one year, if the Congress has not

appropriated any money specifically for such agency or instrumentality or specifically authorized the expenditure of funds by it. For the purposes of this section, any agency or instrumentality including those established by Executive order shall be deemed to have been in existence during the existence of any other agency or instrumentality, established, by a prior Executive order, if the principal functions of both of such agencies or instrumentalities are substantially the same or similar. When any agency or instrumentality is or has been prevented from using appropriations by reason of this section, no part of any appropriation or fund made available by this or any other Act shall be used to pay the expenses of the performance by any other agency or instrumentality of functions which are substantially the same as or similar to the principal functions of the agency or instrumentality so prevented from using appropriations, unless the Congress has specifically authorized the expenditure of funds for performing such functions. June 27, 1944, c. 286, Title II, § 213, 58 Stat. 337.

References in Text.- "This Act" referred to in the text is the Independent Offices Appropriation Act, 1945, Act June 27, 1944, c. 286, 58 Stat. 363.

§ 697. Executive branch appropriations; availability for discharge of national defense responsibilities; transfer between appropriations or allocations

Any appropriation to any department, agency, or corporation, in the executive branch of the Government, for salaries and expenses, shall be available for the discharge of responsibilities, relating to the national defense, assigned to such department, agency, or corporation by or pursuant to law and transfers may be made between appropriations or allocations within any such department, agency, or corporation as may be necessary to carry out this proviso, and no allocation shall be made to any agency which can perform such defense activities as may have been or hereafter be assigned to such agency which can be performed by its regular personnel by use of the foregoing authority to realign its regular programs. June 2, 1951, c. 121, ch. XI, § 1201, 65 Stat. 60.

PERMANENT ANNUAL APPROPRIATIONS

§ 711. Permanent indefinite appropriations

(3) Refunding moneys erroneously received and covered

Effective July 1, 1935, the appropriation provided for in this paragraph was affected by Act June 26, 1934, c. 756, § 18, 48 Stat. 1231. See section 725q (b) of this title.

(4)–(6). Repealed. June 26, 1934, c. 756, §§ 1, 2, 48 Stat. 1225.

Effective July 1, 1935, the permanent appropriation for redemption of Internal Revenue stamps in paragraph (4) was repealed by act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) (7) of this title.

Paragraph (5), relating to debentures and other charges, was repealed effective July 1, 1935. See section 725 (b) (4) of this title.

Effective July 1, 1935, the permanent appropriation for debentures and drawbacks in paragraph (6) was repealed by act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) (10) of this title.

(8) Refunding duties on goods destroyed (customs)

Effective July 1, 1935, the permanent appropriation provided for in this paragraph was repealed by Act June 26, 1934, c. 756, § 2, 48 Stat. 1226, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) (20) of this title.

(9). Repealed. July 1, 1944, c. 373, Title VII, § 713, 58 Stat. 714, renumbered Aug. 13, 1946, c. 958, § 5, 60 Stat. 1049, rerenumbered Feb. 28, 1948, c. 83, § 9 (b), 62 Stat. 47.

(10), (11). Repealed. June 26, 1934, c. 756, § 2, 48 Stat. 1226.

Effective July 1, 1935, the permanent appropriation provided for in paragraphs 10 and 11 was repealed by Act June 26, 1934, c. 756, § 2, 48 Stat. 1226, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b), (25), (26) of this title.

(12) Soldiers' Home

Effective July 1, 1935, this paragraph was affected by Act June 26, 1934, c. 756, § 20, 48 Stat. 1233.

See section 725s (a) of this title and sections 11–11f of Title 38.

(13) Horses and other property lost in military service

Words "sections 191–199, 201–214, 231–235 of this title" should be substituted for "chapter 6 of this title".

(14) Indemnity for lost clothing

Effective July 1, 1935, the appropriation provided for in this paragraph was affected by Act June 26, 1934, c. 756, § 3, 48 Stat. 1226.

Reimbursement of officers and men of Navy and Marine Corps for personal property lost, destroyed, or damaged by operations of war, see section 981 et seq. of Title 34, Navy.

See section 725b (b) of this title.

(16) Deposits for surveying public lands

The permanent or continuing appropriation for "Surveying within land grants (reimbursable)" was repealed by Act June 26, 1934, c. 756, § 1, 48 Stat. 1224, section 725 of this title.

See notes under sections 886 and 908 of Title 43.

(17) Five per centum fund to States

The figures "1920" in line 6 of subsection (17) of this section should read "1820."

Effective July 1, 1935, the appropriation provided for in this paragraph was affected by Act June 26, 1934, c. 756, § 4, 48 Stat. 1227. See section 725c (b) (34) of this title.

(18) Indemnity for swamp lands for States

Effective July 1, 1935, the permanent appropriation provided for in this paragraph was affected by Act June 26, 1934, c. 756, § 3, 48 Stat. 1226. See section 725b (b) (8) of this title.

(19) Refunding money for lands erroneously sold

Effective July 1, 1935, the appropriation provided for in this paragraph was affected by Act June 26, 1934, c. 756, § 18, 48 Stat. 1231. See section 725q (b) (14) of this title.

(20) Payment of interest to North Carolina Cherokees

Other appropriations for Eastern Bands of Cherokees, expenditure and interest, see Acts Mar. 3, 1875, c. 132, 18 Stat. 447; Aug. 15, 1876, c. 289, 19 Stat. 197; Mar. 3, 1877, c. 101, 19 Stat. 291.

(21) Smithsonian Institution

"343" in line 5 should be "359"; "178" in line 5 should be "205" "274" in line 6 should be "295".

"July 3, 1930, c. 863, § 1, 46 Stat. 1016," should be added to citation.

R. S. § 3048 from Act Mar. 3, 1849, c. 110, § 2, 9 Stat. 398.

This paragraph is affected by section 725s (c) of this title.

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 13, 1946, cited to text, see 1946 U.S.Code Cong.Service, p. 1558. See, also, Act Feb. 28, 1948, 1948 U.S.Code Cong.Service, p. 1103.

§ 712. Repealed. July 6, 1949, c. 299, § 3, 63 Stat. 407, eff. July 1, 1949.

1. Application of balances in general

Under this section any unexpended balance of allotment made to any department may be restored to parent appropriation and reallotted. (1920) 32 Op. Atty. Gen. 359.

§ 712a. Balances of appropriations; expenditure

Except as otherwise provided by law, all balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year. July 6, 1949, c. 299, § 1, 63 Stat. 407.

Effective date. Section 3 of Act July 6, 1949, cited to text, provided in part that this section and section 712b of this title should be effective as of July 1, 1949.

Short title. Congress in enacting sections 712a and 712b of this title provided by section 4 of Act July 6, 1949 cited to text, that they should be popularly known as the "Surplus Fund—Certified Claims Act of 1949".

Legislative History: For legislative history and purpose of Act July 6, 1949, cited to text, see 1949 U.S.Code Cong. Service, p. 1517.

§ 712b. Same; carried over to "Payment of certified claims" fund; appropriations inapplicable to; surplus

Unless a longer period of availability for expenditure is specifically provided in an appropriation or other law, on July 1 in each year the unexpended balances of all appropriations which shall have remained upon the books of the Government for two fiscal years following the fiscal year or years for which appropriated shall lapse and the Secretary of the Treasury shall cause such balances to be transferred to a consolidated appropriation account, to be known as "Payment of certified claims", and such funds shall remain available until expended for the payment of claims, within the limits of and chargeable to the respective balances of any lapsed appropriations, which may be certified by the Comptroller General of the United States to be lawfully due: *Provided,* That this section shall not apply to permanent specific appropriations or appropriations for rivers and harbors, lighthouses, or public buildings (which shall continue available until otherwise ordered by the Congress) or to appropriations for the Post Office Department or the postal service: *Provided further,* That on July 1 of each year, all funds in the appropriation account "Payment of certified claims", certified by the Comptroller General of the United States as not required for the payment of claims thereunder, shall be carried to the surplus fund of the Treasury. July 6, 1949, c. 299, § 2, 63 Stat. 407.

Effective date. Section effective as of July 1, 1949, see note set out under section 712a of this title.

§ 712c. Payment of certified claims; appropriation

For payment of claims (not to exceed $500 in any case) which may be certified by the Comptroller General of the United States to be within the limits of, and chargeable against the balances of the respective appropriations which, after remaining unexpended, have been carried to the surplus fund, there is appropriated for the Treasury Department, out of any money in the Treasury not otherwise appropriated, such amounts as hereafter may be necessary. June 30, 1949, c. 286, Title I, § 101, 63 Stat. 358.

§ 713. Repealed. July 6, 1949, c. 299, § 3, 63 Stat. 407, eff. July 1, 1949.

1. Permanent specific appropriation

There is no legal objection to a request to the Congress to appropriate funds to the Air Force for the procurement of aircraft and aeronautical equipment to remain available until expended. 1948, 40 Op.Atty.Gen. 555.

§ 713a. Entries on books for settlement of accounts of disbursing officers

Whenever it may be necessary in the settlement of the accounts of disbursing officers of the Government for expenditures already made in pursuance of law, to use appropriations carried to the surplus fund under section 713 of this title the Secretary of the Treasury is hereby authorized to make the necessary entries on the books of the Department to effect such settlements, *Provided,* That such entries shall not involve the expenditure of any moneys from the Treasury. Mar. 3, 1875, c. 131, § 5, 18 Stat. 418.

Codification. Section 713 of this title referred to in the text, was superseded by sections 712a and 712b of this title and repealed by section 3 of Act July 6, 1949, c. 299, 63 Stat. 407, eff. July 1, 1949.

§ 714. Repealed. July 6, 1949, c. 299, § 3, 63 Stat. 407, eff. July 1, 1949.

§ 716. Repealed. July 6, 1949, c. 299, § 3, 63 Stat. 407, eff. July 1, 1949.

§ 719. Unexpended balances for Veterans' Administration

The provisions of sections 712 and 715 of this title shall apply to all appropriations made for the maintenance of the Veterans' Administration. As amended July 3, 1930, c. 863, § 2; 46 Stat. 1016; July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501; Sept. 12, 1950, c. 946, Title III, § 301(100), 64 Stat. 844.

1950 Amendment. Act Sept. 12, 1950, cited to text, amended section by repealing the proviso requiring estimates to be furnished to the Secretary of the Army, and requiring such Secretary annually to include such estimates in his estimates of his department.

1930 Amendment. Act July 3, 1930, cited to text, substituted "Veterans' Administration" in lieu of "National Home for Disabled Volunteer Soldiers", and, in former proviso of this section, substituted "Administrator of Veterans' Affairs" in lieu of "managers of said home".

The National Home for Disabled Volunteer Soldiers formerly mentioned in this section was by authority of chapter 1a of Title 38 and the President's order of July 21, 1930 been consolidated with certain other agencies into an establishment known as the Veterans' Administration. The Administrator of Veterans' Affairs is the head of the establishment and has all the powers and duties of the former Board of Managers of the National Home for Disabled Volunteer Soldiers.

Change of Name. The title of the Secretary of War, referred to in former proviso of this section, was changed to "Secretary of the Army" by Act July 26, 1947, cited to text.

Savings clause. Jurisdiction or responsibility of any agency or officer over any function or organizational unit, referred to in former provisions of this section, as affected by their repeal by act Sept. 12, 1950, cited to text, see note under former sections 582-591 of this title.

Legislative History: For legislative history and purpose of Act Sept. 12, 1950, see 1950 U.S.Code Cong.Service, p. 3707.

§ 720. Proceeds of sales of material

All moneys received from the leasing or sale of marine hospitals, or from the sale of commissary stores to the officers and enlisted men of the Army, or from the sale of materials, stores, or supplies sold to officers and soldiers of the Army, or from sales of condemned clothing of the Navy, or from sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall respectively revert to that appropriation out of which they were originally expended, and shall be applied to the purposes for which they are appropriated by law. As amended Aug. 4, 1949, c. 393, §§ 1, 20, 63 Stat. 496, 561.

1949 Amendment. Act Aug. 4, 1949, §§ 1, 20, cited to text, amended section to repeal the phrase "or the sale of Coast Guard cutters" following "marine hospitals," as this provision is now covered by section 92(d) of Title 14, Coast Guard, and to repeal Act Jan. 28, 1915, c. 20, § 1, 38 Stat. 800. Section 1 of said Act Aug. 4, 1949, reestablished the Coast Guard.

Effective date. Amendment of section by act Aug. 4, 1949, cited to text, effective as of the first day of the third month after the month of approval, August 1949, see note set out preceding chapter 1 of Title 14, Coast Guard.

Cross References. Expenses of sale to be paid before proceeds are deposited in Treasury, see section 489 of this title.

Proceeds from sale of ordnance material to be deposited into Treasury as miscellaneous receipts and equal amounts appropriated annually from general fund of Treasury for same purpose, see section 725c(10) of this title.

Replacement accounts to be credited with only such amounts as represent sales of stores, materials, and supplies at actual cost to War Department, see section 725i of this title.

Sale of unfit Coast Guard cutters, see section 69 of Title 14, Coast Guard.

§ 721. Payments of appropriations for charitable purposes

"May 29, 1920, c. 214, 41 Stat. 654," should be added to citation.

§ 723. Appropriations for advance planning of public works

There are authorized to be appropriated funds for advance planning, construction design and architectural services in connection with public works projects which are not otherwise authorized by law in such amounts as may be provided in the appropriation Act concerned. Such sums as are appropriated shall remain available until expended when specifically provided in the appropriation Act. Sept. 28, 1951, c. 434, Title V, § 504, 65 Stat. 364.

Legislative History: For legislative history and purpose of Act Sept. 28, 1951, see 1951 U.S.Code Cong. Service, p. 2213.

§ 724. Utilization of foreign credits authorized in general appropriation Acts.

Foreign credits owed to or owned by the United States Treasury will not be available for expenditure by agencies of the United States after

June 30, 1953, except as may be provided for annually in appropriation Acts and provisions for the utilization of such credits for purposes authorized by law are authorized to be included in general appropriation Acts. July 15, 1952, c. 758, ch. XIV, § 1415, 66 Stat. 662.

Cross References. Mutual Security Act, use of special local currency accounts established under bilateral and multilateral undertakings, and use of proceeds of sales of surplus agricultural commodities, notwithstanding this section, see sections 1513(h) and 1675p of Title 22, Foreign Relations and Intercourse.

Pakistan Food Aid Credits. Nothing contained in Act June 25, 1953, c. 150, 67 Stat. 80, providing for delivery of wheat to Pakistan, to affect applicability of this section or other law to local currency allocated to use of United States in accordance with agreement provided for in section 3 of that Act, see note under section 1702 of Title 22, Foreign Relations and Intercourse.

PERMANENT APPROPRIATIONS REPEAL

§ 725. Permanent Appropriations Repeal Act; appropriations repealed

(a) That effective July 1, 1935, such portions of any Acts as provide permanent or continuing appropriations from the general fund of the Treasury to be disbursed under the appropriation accounts appearing on the books of the Government, and listed in subsection (b) of this section, are hereby repealed, and any unobligated balances under such accounts as of June 30, 1935, shall be covered into the surplus fund of the Treasury.

(b) (1) Preparation, custody, and delivery of farm-loan bonds, reimbursable (2x152).

(2) Preparation, custody, and delivery of Federal intermediate credit bank securities, reimbursable (2x153).

(3) Preparation and issue of Federal Reserve notes, reimbursable (2x151).

(4) Debentures and other charges (customs).

(5) Payment for lands sold for direct taxes (2x435).

(6) Refunding corporation- and income-tax penalties (Internal Revenue) (2x425).

(7) Refunding stamp tax on export bills of lading (2x427).

(8) Refunding stamp tax on foreign bills of exchange (2x433).

(9) Refunding tax on contingent beneficial interests (2x428).

(10) Refunding tax on certain legacies (2x426).

(11) Surplus proceeds, property sold for internal-revenue taxes (2x441).

(12) Payment of Cape Cod Canal bonds (2x087).

(13) Surveying within land grants (reimbursable) (4x164).

(14) Fees on certain Indian allotments (4x025).

(15) Distribution of United States Code, Revised Statutes, and so forth (4x019).

(16) Transportation of Volunteers, War with Spain (8x175).

(17) Powder and projectiles, proceeds of sales (8x423). (June 26, 1934, c. 756, § 1, 48 Stat. 1224.)

§ 725a. Same

(a) Effective July 1, 1935, the permanent appropriations under the appropriation titles listed in subsection (b) of this section are repealed, and such portions of any Acts as make permanent appropriations to be expended under such accounts are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations, except that any appropriation for "Adjusted losses and contingencies, postal fund", is authorized to be made from the postal revenues. Any unobligated balances remaining in the permanent appropriations under these accounts on June 30, 1935, shall be covered into the surplus fund of the Treasury: *Provided*, That in addition to amounts in lieu of the permanent appropriation "Meat Inspection, Bureau

of Animal Industry (fiscal year)" there is authorized to be appropriated such other sums as may be necessary in the enforcement of sections 71–96 of Title 21.

Customs, see section 1520 of Title 19, Customs Duties.

(b) (1) Interest on Indian trust funds.

(2) Civilization of the Sioux (4x950).

(3) Meat inspection, Bureau of Animal Industry (fiscal year) (3–114).

(4) National Forest Reservation Commission (fiscal year) (3–494).

(5) Pay of consular agents for services to American vessels and seamen (1x561).

(6) Allowance or drawback (Internal Revenue) (2x438).

(7) Redemption of stamps (Internal Revenue) (2x432).

(8) Refunding legacy taxes, Act March 30, 1928 (2x430).

(9) Refund of excessive duties (Customs) (2x324).

(10) Debentures or drawbacks, bounties, or allowances (Customs) (2x321).

(11) Allowance or drawback (Industrial Alcohol) (2x440).

(12) Permanent International Commission of Congresses of Navigation (fiscal year) (8–887).

(13) Operating and care of canals and other works of navigation (8x881).

(14) Removing sunken vessels or craft obstructing or endangering navigation (8x888).

(15) Removing obstructions in Mississippi, Atchafalaya, and Old Rivers (fiscal year) (8–961.58).

(16) Maintenance of channel, South Pass, Mississippi River (fiscal year) (8–961.55).

(17) Gauging waters of the Mississippi and its tributaries (fiscal year) (8–961.54).

(18) Examinations and surveys at South Pass, Mississippi River (fiscal year) (8–961.53).

(19) Recoinage of silver coins (2x106).

(20) Refunding duties on goods destroyed (Customs) (2x330).

(21) Refunding to national banking associations excess of duty (2x228).

(22) Salaries and expenses, Federal Board for Vocational Education (fiscal year) (0–801).

(23) Repayment of taxes on distilled spirits destroyed by casualty (2x431).

(24) Adjusted losses and contingencies, postal fund (9x256).

(25) Refunding proceeds of unclaimed merchandise (Customs) (2x326).

(26) Proceeds of goods seized and sold (Customs) (2x322).

(27) Operating snag and dredge boats on upper Mississippi, Illinois, and Minnesota Rivers (fiscal year) (8–962.60).

(28) Operating snag boats on the Ohio River (fiscal year) (8–962.51). June 26, 1934, c. 756, § 2, 48 Stat. 1225, amended 1946 Reorg. Plan No. 2, § 8, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1096.

Transfer of Functions. Federal Board for Vocational Education, mentioned in subsec. (b) (22), was abolished by 1946 Reorg. Plan No. 2, cited to text, and set out in note under section 133y-16 of Title 5, Executive Departments and Government Officers and Employees. See also notes set out in section 11 of Title 20, Education.

§ 725b. Same

(a) Effective July 1, 1935, the permanent or continuing appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section are hereby abolished, and any unobligated balances under such accounts as of June 30, 1935, shall be covered into the surplus fund of the Treasury. Any appropriations to which expenditures under such accounts have been chargeable prior to July 1, 1935, are here-

by repealed. Any claims accruing on and after July 1, 1935, which, but for this section properly would have been charged to these appropriation titles, shall, upon proper audit, be certified to Congress for appropriation from the general fund of the Treasury, which is hereby authorized.

(b) (1) Extra pay to Regular Army, War with Spain (8x172).

(2) Extra pay to Volunteers, War with Spain (8x173).

(3) Claims of officers and men of the Army for destruction of private property (8x123).

(4) Bounty to Fifteenth and Sixteenth Missouri Cavalry Volunteers (8x164).

(5) Judgments in admiralty suits under sections 741–752 of Title 46, Department of the Army (8x143).

(6) Reimbursement for bringing home remains of officers and others (Navy) (7x816).

(7) Reimbursement for bringing home remains of officers and others (War) (8x765).

(8) Indemnity for swamp land to States (4x160).

(9) Proceeds of mineral or reserved lands, Tanana Valley, Alaska, special fund (4x167).

(10) Proceeds of town sites for schools in Oklahoma (4x464).

(11) Indemnity to seamen and marines for lost clothing (7x977).

(12) Reimbursement to certain persons for loss of private funds while patients at United States Naval Hospital, Naval Operating Base, Hampton Roads, Virginia (7x973).

(13) Judgments, bounty for destruction of enemies' vessels (7x956).

(14) Judgment, owners, and so forth, barkentine Mabel I. Meyers, under Act of August 21, 1916 (7x959).

(15) Relief of claimants, explosion at Naval Ammunition Depot, Lake Denmark, New Jersey (7x975).

(16) Guaranty to carriers after termination of Federal control (0x961).

(17) Reimbursement to carriers of deficits during Government control (0x963).

(18) Guaranty to American Railway Express Company during guaranty period (0x965).

(19) Judgments in admiralty suits under sections 741–752 of Title 46, United States Shipping Board (0x556).

(20) Judgments of courts (Revised Statutes, section 3754 [section 809 of Title 40]) (7x965).

(21) Bounty for destruction of enemies' vessels (7x961).

(22) Claims arising from operations under Wheat Price Guarantee Act of March 4, 1919 (0x482).

(23) Proceeds sale of town lots, Lawton, Oklahoma (4s174).

(24) Proceeds of certain lands in township 8-North, Nebraska (4s176). June 26, 1934, c. 756, § 3, 48 Stat. 1226, amended July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

1. Powers and duties of Secretary of Navy

Under earlier Acts, the Secretary of the Navy was constituted the trustee of the navy pension fund; and as such it was made his duty to grant and pay the pensions, according to the terms of the acts of Congress. Decatur v. Paulding, Dist.Col.1840, 14 Pet. 497, 512, 10 L.Ed. 559.

Former R.S. § 4750 transferred to the Secretary of the Navy all the powers theretofore possessed by the commissioners of the navy pension fund to make regulations for the admission of persons upon the roll of navy pensioners and for the payment of such pensions. 1848, 5 Op.Atty.Gen. 41.

Under former R.S. § 4753, the Secretary of the Navy had authority to transfer the bonds in which a part of the navy pension fund was invested. 1841, 3 Op. Atty.Gen. 719.

2. Mandamus

Under earlier Acts, mandamus would not lie to control the secretary's judgment or discretion. Decatur v. Paulding, Dist.Col.1840, 14 Pet. 497, 512, 10 L.Ed. 559.

3. Condemnation proceeds

Under earlier Acts, one half the proceeds of vessels captured and condemned for piracy should be paid to naval pension fund. 1834, 2 Op.Atty.Gen. 648.

§ 725c. Same

(a) Effective July 1, 1935, all receipts of the character theretofore credited to the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section shall be deposited into the Treasury as miscellaneous receipts, and amounts equal thereto are authorized to be appropriated annually from the general fund of the Treasury for the same purposes for which such receipts are now appropriated. Appropriations to which expenditures under such accounts have been chargeable theretofore are hereby repealed, effective on such date: *Provided*, That if the total of receipts for any one fiscal year for any of the foregoing purposes under this authority is greater than the amounts appropriated for such purpose, such excess is authorized to be appropriated for the following fiscal year.

(b) (1) Wagon roads, bridges, and trails, Alaska fund (4s524).

(2) Public schools, Alaska fund (4s366).

(3) Coos Bay Wagon Road Grant fund (4s168).

(4) Payment to Oklahoma from royalties, oil and gas, south half of Red River (4s028).

(5) Five per centum fund of net proceeds of sales of agricultural lands in Colorado (4s183).

(6) Annette Islands reserve, Alaska, fund from leases (5s740).

(7) Relief of the indigent, Alaska fund (2s108).

(8) Naturalization fees, publishing citizenship textbooks, Bureau of Naturalization (6–836).

(9) Additional income tax on railroads in Alaska (2s442).

(10) Ordinance material, proceeds of sales (War) (8s422).

(11) Maintenance and operation of dams and other improvements of navigable waters (8s876).

(12) Construction, irrigation system, Wapato Project, Washington, Act February 14, 1920 (5s781).

(13) Maintenance, irrigation system (name of project), Act August 1, 1914.

(14) Maintenance, irrigation system (name of project), Act May 18, 1916.

(15) Maintenance, power system, Flathead Reservation, Montana, Act May 10, 1926 (5s796).

(16) Power plant, Coolidge Dam, Arizona, electric-current fund, Act March 7, 1928 (5s804.9).

(17) The Oregon and California Land Grant fund (4s169).

(18) Redistribution, funds for indigent, Alaska fund (2s109).

(19) Building or purchase of vessels for the Coast Guard from proceeds of sales (2s373).

(20) Rebuilding and improving Coast Guard stations from proceeds of sales (2s363).

(21) Military post construction fund (8s250).

(22) National Guard, section 87, National Defense Act (fiscal year) (8–715).

(23) Indian-school improvements, Act April 21, 1904 (4x794).

(24) Purchase of lands for landless Indians in California, Act March 3, 1925 (4x812).

(25) Yuma Auxiliary Irrigation Project, Arizona (4s507).

(26) Alaskan reindeer fund (4s365).

(27) United States Naval prison activities fund (7s925).

(28) Injury claims assigned, Veterans' Administration (0s878).

(29) After June 30, 1936, migratory bird conservation fund (3s362).

(30) Losses on war-risk insurance of American vessels, their cargoes, and so forth, special fund (0s865).

(31) Gas production, helium plants, Bureau of Mines (6s685).

(32) Perry's Victory Memorial (0s727).

(33) Inland and Coastwise Waterways Service Fund (8x875).

(34) Five Percent Funds to States (4s166). (June 26, 1934, c. 756, § 4, 48 Stat. 1227.)

Bureaus of Naturalization and Immigration were consolidated as Immigration and Naturalization Service by Ex. Ord. No. 6166, § 14, June 10, 1933, set out in note under section 132 of Title 5.

Appropriation of special fund for operation of dams and other navigation structures owned by the United States, see section 810 of Title 16, Conservation.

§ 725d. Same

(a) Effective July 1, 1935, the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section are abolished, and any unobligated balances under such accounts as of that date shall be covered into the surplus fund of the Treasury. Any appropriations to which expenditures under such accounts have been chargeable theretofore are hereby repealed, effective on such date. To the extent that the annual appropriations, which are hereby authorized to be made from the general fund of the Treasury for the same purposes for which expenditures are now made from said accounts, are insufficient, there are hereby authorized to be appropriated from the general fund of the Treasury such additional amounts as may be necessary, to the extent that the amounts of such receipts are in excess of the amounts appropriated.

(b) (1) Expenses, Cotton Standards Act (3s535).

(2) Classification of cotton, revolving fund (3s320).

(3) Extra compensation for overtime, Immigration Service (6s803). (June 26, 1934, c. 756, § 5, 48 Stat. 1228.)

§ 725e. Same

(a) Effective July 1, 1935, receipts theretofore authorized to be credited to the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section shall be deposited into the Treasury of the United States as miscellaneous receipts, and there are hereby authorized to be appropriated from the general fund of the Treasury such amounts as may be necessary for the Patent Office: *Provided*, That this paragraph shall be subject to section 725q of this title insofar as such section is applicable to Patent Office fees.

(b) (1) Salaries and expenses, Patent Office (6s289). (June 26, 1934, c. 756, § 6, 48 Stat. 1228.)

Transfer of functions. The functions of all other officers of the Department of Commerce and all functions of all agencies and employees of such Department, were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg.Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 591 of Title 5, Executive Departments and Government Officers and Employees. The Patent Office, referred to in this section, is an agency of the Department of Commerce.

§ 725f. Same

(a) Effective July 1, 1935, any balances credited to the following appropriation accounts on the books of the Government and listed in subsection (b) of this section shall be covered into the surplus fund of the Treasury, and any appropriations to which expenditures under such accounts have been chargeable theretofore are hereby repealed. Claims or payments chargeable to said accounts, upon proper audit, shall be certified to Congress for appropriation from the general fund of the Treasury, which is hereby authorized.

(b) (1) Prize money to captors (7T987).

(2) Prize money to captors, Spanish War (7T988).

(3) Prize money, Battle of Manila Bay (7T986).

(4) Spanish Indemnity, Interest (2T082).

(5) Spanish Indemnity, Principal (2T082.1).

(6) Trust-fund Interest for Support of Free Schools in South Carolina (2T084). (June 26, 1934, c. 756, § 7, 48 Stat. 1228.)

§ 725g. Same

Effective July 1, 1935, the appropriation account on the books of the Government entitled "Recreation Fund, Army" (8T078), is abolished and the balance thereof shall be covered into the surplus fund of the Treasury: *Provided*, That an amount equal to the amount so covered into the surplus fund of the Treasury is hereby authorized to be appropriated from the general fund of the Treasury in the event of war, for the recreation, amusement, comfort, contentment and health of the enlisted personnel of the Military Establishment. (June 26, 1934, c. 756, § 8, 48 Stat. 1229.)

1. Construction

Congress, by the enactment of section 16 of Title 10 and the various appropriations for Army Post Exchanges from 1903 to date, has recognized and validated the functions of United States Army Post Exchanges and has in effect thereby confirmed and approved the regulations, promulgated by the Secretary of War under that section, under which such Post Exchanges were established. U. S. v. Query, D.C.S.C.1941, 37 F.Supp. 972, affirmed, C.C.A.1941, 121 F.2d 631, certiorari denied, 1942, 62 S.Ct. 295, 314 U. S. 685, 86 L.Ed. 548, vacated on other grounds and certiorari granted, 1942, 62 S.Ct. 1036, 316 U.S. 653, 86 L.Ed. 1733.

§ 725h. Same

Effective July 1, 1935, (a) the Naval Pension Fund (7t982) is abolished, any unobligated balance therein, as of that date, shall be covered into the surplus fund of the Treasury, and interest on such fund shall cease; (b) moneys theretofore required by law to be paid into such fund shall be deposited into the Treasury of the United States as miscellaneous receipts; and (c) commencing with the fiscal year 1936 annual appropriations in such amounts as may be necessary are authorized from the general fund of the Treasury for the maintenance, operation, and improvement of the Naval Home. (June 26, 1934, c. 756, § 9, 48 Stat. 1229.)

Cross References. Naval Home, provisions relating to, see sections 6a, 14, 17 and 21a-25 of Title 24, Hospitals, Asylums and Cemeteries.

§ 725i. Repealed. Aug. 1, 1953, c. 305, Title VI, § 645, 67 Stat. 357

Section, Act June 26, 1934, c. 756, § 10, 48 Stat. 1229, provided that credit should be made to certain specified Army replacement accounts of only such amounts as represented sales of stores, materials and supplies at actual cost to the Department, and is now covered by sections 172d and 172d—1 of Title 5, Executive Departments and Government Officers and Employees.

§ 725j. Same

Effective July 1, 1935, the amounts received from assessments authorized to be made against the Federal home-loan banks for salaries and expenses of the Federal Home Loan Bank Board shall be covered into the Treasury as miscellaneous receipts. Commencing with the fiscal year 1936 there are authorized to be appropriated annually, from the general fund of the Treasury, such sums as may be necessary to defray the cost of such activities. (June 26, 1934, c. 756, § 11, 48 Stat. 1229.)

Transfer of Functions. The Federal Home Loan Bank Board was abolished and its functions transferred to the Home Loan Bank Board by 1947 Reorg. Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, set out in note to section 133y-16 of Title 5, Executive Departments and Government Officers and Employees.

§ 725k. Same

Effective July 1, 1935, the appropriation account "Unpaid Money Orders More Than One Year Old", carried on the books of the Government, is hereby abolished, and the balance therein shall be covered into the postal revenues, and any appropriations to which expenditures under such accounts have been chargeable theretofore are hereby repealed. There is hereby authorized to be appropriated from postal revenues such sums as may be necessary to make any expenditures which, but for its abolition, would be chargeable to this account. (June 26, 1934, c. 756, § 12, 48 Stat. 1229.)

§ 725*l*. Same [Omitted.]

This section (Act June 26, 1934, c. 756, § 13, 48 Stat. 1230) relates to the District of Columbia and is omitted.

§ 725m. Same [Omitted.]

This section (Act June 26, 1934, c. 756, § 14, 48 Stat. 1230) relates to the District of Columbia and is omitted.

§ 725n. Same

This section, Act June 26, 1934, c. 756, § 15, 48 Stat. 1230, which repealed section 530 of Title 34, is executed.

§ 725o. Same

All receipts for interest on the account of the Navy Department with the London fiscal agents, premiums arising from the sales of bills of exchange, and from any depreciation in the value of foreign coin shall be covered into the Treasury as miscellaneous receipts. (June 26, 1934, c. 756, § 16, 48 Stat. 1230.)

§ 725p. Same; trust funds

(a) Effective July 1, 1935, the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section, as well as appropriation accounts bearing similar titles on the books of the Government, are abolished, and any unobligated balances under such accounts as of June 30, 1935, shall be covered into a trust fund receipt account in the Treasury to be designated "Unclaimed Moneys of Individuals Whose Whereabouts Are Unknown." Any appropriations to which expenditures under such accounts have been chargeable theretofore are hereby repealed. There are authorized to be appropriated, annually, from such account such sums as may be necessary to meet any expenditures of the character now chargeable to the appropriation accounts abolished by this section. The Secretary of the Treasury or the Commissioners of the District of Columbia, as the case may be, shall submit with their annual estimates of appropriations an amount necessary to meet expenditures properly chargeable to this account.

(b) (1) Unclaimed moneys, Food Administration (0t548).

(2) Unclaimed moneys of individuals whose whereabouts are unknown (Veterans' Administration) (0t881).

(3) Unclaimed moneys of former patients, Veterans' Administration hospital (0t879).

(4) Unclaimed moneys of individuals whose whereabouts are unknown (relief of American citizens in Europe) (0t542).

(5) Unclaimed moneys of individuals whose whereabouts are unknown (Interior, civil) (4t033).

(6) Unclaimed moneys of individuals whose whereabouts are unknown (Justice) (1t755).

(7) Unclaimed moneys of individuals whose whereabouts are unknown (Labor) (6t750).

(8) Unclaimed moneys of individuals whose whereabouts are unknown (Navy) (7t978).

(9) Unclaimed moneys of individuals whose whereabouts are unknown (State) (1t554).

(10) Unclaimed moneys of individuals whose whereabouts are unknown (Treasury) (2t080).

(11) Unclaimed moneys of individuals whose whereabout[s] are unknown (War) (8t117).

(12) Unclaimed individual Indian moneys (5t009).

(13) Unclaimed funds of discharged patients, Saint Elizabeths Hospital (4t548).

(14) Return of unclaimed money deposited by clerks of courts (1x792).

(15) Outstanding liabilities, lands (4t184).

(16) Return of subscriptions to Liberty Bond issues placed through American consulates (1T631).

(17) Return of subscriptions to Liberty Bond issues by civilian employees of Naval Establishment (7t979).

(18) Refund to depositors, excess licenses, under section 10 (c), Trading with the Enemy Act (0T523).

(19) Return of subscriptions to Liberty Bond issues placed through the postmaster at Philadelphia, Pennsylvania (9t340).

(20) Unclaimed funds of Federal prisoners (1t952).

(21) Rosa Goldman—cash bail exacted (6T472).

(22) Unclaimed funds of Jei Bei Ota, deceased Japanese alien (6T473).

(June 26, 1934, c. 756, § 17, 48 Stat. 1230.)

½. Trustee

Under this section and section 852 of Title 28 governing withdrawal of money paid into federal District Court and deposited with the treasurer or a designated depositary, the United States became a statutory trustee of fund thus deposited for the rightful owners when determined by the District Court. U. S. v. Klein, C.C.A.Pa.1939, 106 F.2d 213, certiorari denied 60 S.Ct. 295, 308 U.S. 618, 84 L.Ed. 517.

1. Jurisdiction

A Pennsylvania court's decree declaring escheat to commonwealth of unclaimed moneys found by federal District Court to be due to bondholders and subsequently transferred from court's registry to federal treasury's account in bank within commonwealth was not an unconstitutional interference with District Court, where District Court acquired jurisdiction because of diversity of citizenship, since, after adjudicating parties' rights, District Court retained jurisdiction only to dispose of moneys, and beyond that its jurisdiction and possession did not curtail power which commonwealth could constitutionally exercise over persons and property within its territory. U. S. v. Klein, U.S.Pa.1938, 58 S.Ct. 536, 303 U.S. 276, 82 L.Ed. 840.

Where the United States made no claim to fund deposited in Pennsylvania federal District Court, transfer thereof into the United States Treasury did not change the Pennsylvania situs of the fund, and hence Pennsylvania state court had jurisdiction to decree escheat of the fund to Pennsylvania. U. S. v. Klein, C.C.A.Pa.1939, 106 F.2d 213, certiorari denied 60 S.Ct. 295, 308 U.S. 618, 84 L.Ed. 517.

2. Service by publication

In proceeding by state of Pennsylvania to escheat fund deposited in the United States Treasury, derived from money paid into Pennsylvania District Court for repayment of principal of bonds which had been improperly diverted, service by publication upon unknown owners was sufficient and escheat proceedings passed good title to the state and authorized awarding the fund to the state as escheator. U. S. v. Klein, C.C.A.Pa.1939, 106 F.2d 213, certiorari denied 60 S.Ct. 295, 308 U.S. 618, 84 L.Ed. 517.

§ 725p—1. Payments of unclaimed moneys; appropriations

For meeting any expenditures of the character formerly chargeable to the appropriation accounts abolished under section 725p of this title, payable from the trust fund receipt account "Unclaimed moneys of individuals whose whereabouts are unknown", there is appropriated for the Treasury Department, out of any money in the Treasury not otherwise appropriated, such amounts as hereafter may be necessary. June 30, 1949, c. 286, Title I, § 101, 63 Stat. 359.

§ 725q. Appropriation accounts abolished

(a) Effective July 1, 1935, the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section, as well as appropriation accounts bearing similar titles on the books of the Government, are abolished, and any unobligated balances under such accounts as of June 30, 1935, shall be covered into the surplus fund of the Treasury. Any appropriations, to which expenditures under such accounts have been chargeable theretofore, are repealed. On July 1, 1935, there shall be established on the books of the Government an account to be designated "Refund of Moneys Erroneously Received and Covered", and there is authorized to be appropriated such sums as may be necessary to meet any expenditures of the character now chargeable to the appropriation accounts herein abolished and other collections erroneously received and covered which are not properly chargeable to any other appropriation. The Secretary of the Treasury shall submit with his annual estimates of appropriations an amount necessary to meet expenditures properly chargeable to this account: *Provided*, That this authority shall not be deemed to apply to any refunds which, under existing law, may be charged to any accounts for which separate provision is made in sections 725 to 725z of this title.

(b) (1) Refunding moneys erroneously received and covered (Navy) (7x972).

(2) Refunding moneys erroneously received and covered (Industrial Alcohol) (2x445).

(3) Refunding moneys erroneously received and covered (War) (8x191).

(4) Refunding moneys erroneously received and covered (State) (1x552).

(5) Refunding moneys erroneously received and covered (Customs) (2x323).

(6) Refunding moneys erroneously received and covered (Treasury) (2x088).

(7) Refunding moneys erroneously received and covered (Justice) (1x791).

(8) Refunding moneys erroneously received and covered (Commerce) (6x050).

(9) Refunding moneys erroneously received and covered (Agriculture) (3x010).

(10) Refunding moneys erroneously received and covered (Labor) (6x741).

(11) Refunding moneys erroneously received and covered (Interior) (4x032).

(12) Refund of tonnage taxes and light dues to citizens of Philippine Islands (6x053).

(13) Refunding passport fees (1x551).

(14) Repayment for lands erroneously sold (4x161).

(15) Refunding penalties or charges erroneously exacted (Customs) (2x325).

(16) Refunding penalties or charges erroneously exacted (State) (1x-552).

(17) Refunding penalties or charges erroneously exacted (Commerce) (6x052).

(18) Refund to depositors, excess of deposits, national-forests fund (3x208).

(19) Refunding moneys erroneously received and covered (Internal Revenue) (2x434). (June 26, 1934, c. 756, § 18, 48 Stat. 1231.)

§ 725q—1. Refund of moneys erroneously received and covered; appropriation

For meeting any expenditures of the character formerly chargeable to the appropriation accounts abolished under section 725q of this title, and any other collections erroneously received and covered which are not properly chargeable to any other appropriation, there is appropriated for the Treasury Department, out of any money in the Treasury not otherwise appropriated, such amounts as hereafter may be necessary. June 30, 1949, c. 286, Title I, § 101, 63 Stat. 358.

§ 725q—2. Refund of forfeited bail in criminal actions; availability of appropriations

Hereafter appropriations available for refunding moneys erroneously received and covered shall be available for the refund of forfeited bail covered into the general fund of the Treasury which has been ordered remitted, in whole or in part, pursuant to the Federal Rules of Criminal Procedure. Oct. 27, 1951, c. 591, 65 Stat. 658.

References in Text. The Federal Rules of Criminal Procedure, referred to in the text, are set out in 18 U.S.C.A., Rules Volume.

Federal Rules of Criminal Procedure. Bail, forfeiture, setting aside of forfeiture, and remission of forfeited bail, see rule 46(f), 18 U.S.C.A.

Legislative History: For legislative history and purpose of Act Oct. 27, 1951, see 1951 U.S.Code Cong. Service, p. 2471.

§ 725r. Fees deposited in Treasury

Effective July 1, 1935, moneys received as Patent Office fees; unearned moneys, lands (Interior Department); reentry permit fees (Justice Department); naturalization fees (Justice Department); and registry fees (Justice Department); and held in the official checking accounts of disbursing officers, shall be deposited in the Treasury of the United States to

appropriately designated trust-fund receipt accounts and shall be available for refunds, and for transfer of the earned portions thereof into appropriate receipt fund titles on the books of the Government: *Provided*, That donations, quasi-public and unearned moneys carried in official checking accounts of disbursing officers and of others required to account to the Comptroller General (excluding clerks and marshals of the United States district courts), administered by officers of the United States by virtue of their official capacity, shall be deposited similarly into the Treasury as trust funds and are hereby appropriated and made available for disbursement under the terms of the trust. June 26, 1934, c. 756, § 19, 48 Stat. 1232, as amended Reorg. Plan. No. V, eff. June 14, 1940, 5 F. R. 2223, 54 Stat. 1238; Dec. 21, 1944, c. 631, § 2, 58 Stat. 845.

Act Dec. 21, 1944, cited to text, amended section by changing word "including" to "excluding" within parenthetical clause in proviso.

Transfer of functions. The functions of all other officers of the Department of Commerce and all functions of all agencies and employees of such Department, were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg.Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 591 of Title 5, Executive Departments and Government Officers and Employees. The Patent Office, referred to in this section, is an agency of the Department of Commerce.

Immigration and Naturalization Service of Department of Labor (including Office of Commissioner of Immigration and Naturalization) and its functions were transferred to Department of Justice, to be administered under direction and supervision of Attorney General; and functions and powers of Secretary of Labor relating to administration of said service and its functions or to administration of immigration and naturalization laws were transferred to Attorney General, by Reorg. Plan No. V, eff. June 14, 1940, set out in note under section 133t of Title 5.

1. Terms of trust

This section contemplated that terms of trust would afford clear direction for disbursement of the fund. Stitzell Weller Distillery v. Wallace, D.C.D.C.1940, 30 F.Supp. 1010, affirmed 118 F.2d 19, 73 App.D.C. 220.

2. Parity payments, refund of

This chapter providing for distribution of trust funds in United States Treasury under terms of trust, did not provide for withdrawal of parity payment fund from United States Treasury and distribution thereof to distillers who had contributed thereto under marketing agreement for distilled spirits industry. Stitzel-Weller Distillery v. Wickard, 1941, 118 F.2d 19, 73 App.D.C. 220.

This section did not authorize disbursement of parity payment fund to which distillers contributed under marketing agreement for distilled spirits industry, where marketing agreement did not show beneficial ownership of parity payment fund. Stitzell Weller Distillery v. Wallace, D.C.D.C.1940, 30 F. Supp. 1010, affirmed 118 F.2d 19, 73 App. D.C. 220.

§ 725s. Same; trust funds

(a) The funds appearing on the books of the Government and listed in subsections (b) [1] and (c) of this section shall be classified on the books of the Treasury as trust funds. All moneys accruing to these funds are hereby appropriated, and shall be disbursed in compliance with the terms of the trust. Hereafter moneys received by the Government as trustee analogous to the funds named in subsections (b) and (c) of this section, not otherwise herein provided for, except moneys received by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, shall likewise be deposited into the Treasury as trust funds with appropriate title, and all amounts credited to such trust-fund accounts are hereby appropriated and shall be disbursed in compliance with the terms of the trust: *Provided*, That, effective July 1, 1935, expenditures from the trust fund "Soldiers' Home, Permanent Fund" (8t184) shall be made only in pursuance of appropriations annually made by Congress, and such appropriations are hereby authorized: *Provided further*, That personal funds of deceased inmates, Naval Home, now deposited with the pay officer of the Naval Home, shall be deposited in the Treasury to the credit of the trust fund account "Personal Funds of Deceased Inmates, Naval Home" (7t989): *Provided further*, That on June 30 of each year there shall be transferred to the trust fund receipt account directed to be established in section 17 of this Act, such portion of the balances in any trust-fund account hereinbefore or hereafter listed or established, except the balances in the accounts listed in subsection (c) of this section, which have been in any such fund for more than one year and represent moneys belonging to individuals whose whereabouts are unknown, and subsequent claims there-

for shall be disbursed from the trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown", directed to be established in section 725p of this title.

(1) Philippine special fund (Customs duties) (2s332).

(2) Philippine special fund (Internal Revenue) (2s443).

(3) Unclaimed condemnation awards, Treasury Department (2t921).

(4) Naval reservation, Olangapo civil fund (7s967).

(5) Personal funds of deceased inmates, Naval Home (7t989).

(6) Return to deported aliens of passage money collected from steamship companies (6t749).

(7) Vocational rehabilitation, special fund (0c980).

(8) Library of Congress gift fund (0c260).

(9) Library of Congress trust fund, investment account (0c249).

(10) Library of Congress trust fund, income from investment account (0c246).

(11) Library of Congress trust fund, permanent loan (0c248).

(12) Relief and rehabilitation, Longshoremen's and Harbor Workers' Compensation Act (0t476).

(13) Cooperative work, Forest Service (3c209).

(14) Wages and effects of American seamen, Department of Commerce (6t055).

(15) Pension money, Saint Elizabeths Hospital (4t545).

(16) Personal funds of patients, Saint Elizabeths Hospital (4t546).

(17) National Park Service, donations (4c470).

(18) Purchase of lands, national parks, donations (4c408).

(19) Extension of winter-feed facilities of game animals of Yellowstone National Park, donations (4c410).

(20) Indian moneys, proceeds of labor, agencies, schools, and so forth (5t301).

(21) Funds of Federal prisoners (1t951).

(22) Commissary funds, Federal prisons (1t953).

(23) Pay of the Navy, deposit fund (7t980).

(24) Pay of Marine Corps, deposit fund (7t981).

(25) Pay of the Army, deposit fund (8t183).

(26) Preservation [of] birthplace of Abraham Lincoln (4c395).

(27) Funds contributed for flood control, Mississippi River, its outlets and tributaries (8c961.86).

(28) Funds contributed for flood control, Sacramento River, California (8c946.54).

(29) Effects of deceased employees, Treasury Department (2t089).

(30) Money and effects of deceased patients, Public Health Service (2t607).

(31) Effects of deceased employees, Department of Commerce (6t054).

(32) Topographic survey of the United States, contributions (6c303).

(33) National Institute of Health, gift fund (2c616).

(34) National Institute of Health, conditional gift fund (2c617).

(35) Patients' deposits, United States Marine Hospital, Carville, Louisiana (2t623).

(36) Estates of deceased personnel, Department of the Army (8t180).

(37) Effects of deceased employees, Department of Interior (4t029).

(38) Fredericksburg and Spotsylvania County Battlefields memorial fund (8c813).

(39) Petersburg National Military Park fund (8c814).

(40) Gorgas memorial laboratory quotas (1c304).

(41) Contributions to International Boundary Commission, United States and Mexico (1c398).

(42) Salvage proceeds, American vessels (1t581).

(43) Wages due American seamen (1t630).

(44) Federal Industrial Institution for Women, contributions for chapel (1c948).

(45) General post fund, National Homes, Veterans' Administration (0t930).

(46) Repatriation of American seamen (1s555).

(47) Expenses, public survey work, general (4s172).

(48) Expenses, public survey work, Alaska (4s173).

(49) Funds contributed for improvement of roads, bridges, and trails, Alaska (4c528).

(50) Protective works and measures, Lake of the Woods and Rainy River, Minnesota (8s863).

(51) Washington redemption fund (DCt622).

(52) Permit fund, District of Columbia (DCt615).

(53) Unclaimed condemnation awards, National Capital Park and Planning Commission, District of Columbia (DCt629).

(54) Unclaimed condemnation awards, Rock Creek and Potomac Parkway Commission, District of Columbia (DCt620).

(55) Miscellaneous trust-fund deposits, District of Columbia (DCt613).

(56) Surplus fund, District of Columbia (DCt621).

(57) Relief and rehabilitation, District of Columbia Workmen's Compensation Act (DCt604).

(58) Inmates' fund, workhouse and reformatory, District of Columbia (DCt605).

(59) Soldiers' Home, permanent fund (8t184).

(60) Chamber Music Auditorium, Library of Congress (0s259).

(61) Bequest of Gertrude Hubbard (0t256).

(62) Puerto Rico special fund (Internal Revenue).

(63) Miscellaneous trust funds, Department of State.

(64) Funds contributed for improvement of (name of river or harbor).

(65) Funds advanced for improvement of (name of river or harbor).

(66) Funds contributed for Indian projects.

(67) Miscellaneous trust funds of Indian tribes.

(68) Ship's stores profits, Navy (7s985).

(69) Completing Surveys within Railroad Land Grants (4t186).

(70) Memorial to Women of World War, Contributions (0c075).

(71) Funds contributed for Memorial to John Ericsson (0s163).

(72) American National Red Cross Building, Contributions (0c426).

(73) Estates of Decedents, Department of State, Trust Fund (1t580).

(74) Funds due Incompetent Beneficiaries, Veterans' Administration (0t852).

(75) To promote the Education of the Blind (principal) (2t092).

(76) Paving Government Road across Fort Sill Military Reservation, Okla. (8c664).

(77) Bequest of William F. Edgar, Museum and Library, office of Surgeon General of the Army (8c504).

(78) Funds Contributed for Flood Control (name of river, harbor, or project).

(79) Matured obligations of the District of Columbia (2t070).

(80) Abolished. June 15, 1943, c. 125, § 1(a), 57 Stat. 152, eff. July 1, 1943.

(81) Abolished. June 15, 1943, c. 125, § 2(a), 57 Stat. 152, eff. July 1, 1943.

(82) To promote the education of the blind (interest) (2x093).

(83) Soldiers' Home, interest account (8x185).

(c) (1) United States Government life insurance fund, Veterans' Administration (0t875).

(2) Estates of deceased soldiers, United States Army (8t189).

(3) Teachers Retirement Fund Deductions, District of Columbia (DCt624).

(4) Teachers Retirement Fund, Government Reserves, District of Columbia (DCt627).

(5) Expenses of Smithsonian Institution Trust Fund (principal) (0t596).

(6) Civil Service Retirement and Disability Fund (0t843).

(7) Canal Zone Retirement and Disability Fund (0t850).

(8) Foreign Service Retirement and Disability Fund (1t560). **June** 26, 1934, c. 756, § 20, 48 Stat. 1233, as amended June 15, 1943, c. 125, §§ 1(a), 2(a), 57 Stat. 152; July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

[1] The designation (b) does not appear in this section.

This section was modified by Act June 25, 1936, c. 814, 49 Stat. 1928, providing that it shall not be applicable to funds held in trust for individual Indians, associations of individual Indians, or for Indian corporations chartered under Act June 18, 1934, c. 576, 48 Stat. 984 (see sections 461–479 of Title 5).

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

Transfer of functions. All functions of all other officers of the Department of the Interior, and all functions of all agencies and employees of such Department, were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg.Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in note under section 481 of Title 5, Executive Departments and Government Officers and Employees. The National Park Service, referred to in this section, is an agency of the Department of the Interior.

Exception as to transfer of functions. Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

Naval Hospital Fund Abolished. Section 1(a, b) of Act June 15, 1943, cited to text, provided: "Effective July 1, 1943, (a) the trust fund, naval hospital fund (48 Stat. 1235(80) (7s815); 31 U.S.C. 725s(a) (80)), is abolished, and any unobligated balance remaining therein as of that date shall be covered into the surplus fund of the Treasury; (b) moneys theretofore required by law to be paid into such fund from annual appropriations shall remain to the credit of the appropriation concerned."

Transfer of accrued monies in Navy funds. Section 3 of Act June 15, 1943, cited to text, provided in part that all moneys accruing to the naval hospital fund (7s815) and navy fines and forfeitures fund (7s984), which were abolished by sections 1 and 2 of said Act, prior to July 1, 1943, but not credited thereto prior to such date, should be covered into the surplus fund of the Treasury.

Navy Fines and Forfeitures Fund Abolished. Section 2(a, b) of Act June 15, 1943, provided: "Effective July 1, 1943, (a) the trust fund, Navy fines and forfeitures (48 Stat. 1235(81) (7s984); 31 U.S.C. 725s(a) (81)), is abolished, and any unobligated balance remaining therein as of that date shall be covered into the surplus fund of the Treasury; (b) moneys theretofore required by law to be paid into such fund from annual appropriations, and all pay forfeited by law or by the terms of a court-martial sentence, shall remain to the credit of the appropriation concerned."

Cross References. Office of Naval Records and Library Fund, see section 419b of Title 5.

Expenditure, notwithstanding this section, of money accruing from commutation of rations and provisions in connection with light vessels and tenders, see section 770 of Title 33, Navigation and Navigable Waters.

General post fund, National Homes, Veterans Administration, see sections 14–14e, 17–17j of Title 38, Pensions, Bonuses and Veterans' Relief.

§ 725s–1. Indian irrigation projects; deposit of assessments as trust fund; disposition of fund

Effective August 7, 1946, collections made from water users on each Indian irrigation project on account of assessments levied to meet the cost of operating and maintaining such project shall be deposited into the Treasury for credit to a trust-fund account pursuant to section 725s of this title, and shall be available for expenditure in carrying out the purposes for which collected. Aug. 7, 1946, c. 802, § 1, 60 Stat. 895.

§ 725s–2. Same; amounts creditable to fund

There shall be credited to each trust-fund account established under section 725s–1 of this title the excess, if any, of (1) the unexpended balance of any repealed special fund appropriation to which operation and maintenance collections were credited prior to July 1, 1935, and (2) the amount of receipts covered into the Treasury pursuant to section 725c of this title, over expenditures from appropriations provided for the operation and maintenance of the irrigation project from which such unexpended balance or receipts were derived, and the amount so credited shall be subject to expenditure as prescribed in section 725s–1 of this title. Aug. 7, 1946, c. 802, § 2, 60 Stat. 895.

§ 725s—3. Same; appropriation and disposition of power revenues

Revenues collected after August 7, 1946 from power operations on each Indian irrigation project and deposited into the Treasury for credit to miscellaneous receipts pursuant to section 725c of this title, or pursuant to other provisions of law, are authorized to be appropriated annually, in specific or in indefinite amounts, equal to the collections so credited, for the following purposes in connection with the respective projects from which such revenues are derived: (1) Payment of the expenses of operating and maintaining the power system; (2) creation and maintenance of reserve funds to be available for making repairs and replacements to, defraying emergency expenses for, and insuring continuous operation of the power system, the fund for each project to be maintained at such level, within limits set by the Director of the Bureau of the Budget, as may from time to time be prescribed by the Secretary of the Interior; (3) amortization, in accordance with the repayment provisions of the applicable statutes or contracts, of construction costs allocated to be returned from power revenues; and (4) payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law. Aug. 7, 1946, c. 802, § 3, 60 Stat. 895.

§ 725s—4. Commissary Funds, Federal Prisons; acceptance of gifts and bequests; exemption from tax

The Attorney General may accept gifts or bequests of money for credit to the "Commissary Funds, Federal Prisons", which gifts or bequests, for the purpose of Federal income, estate, and gift taxes, shall be deemed to be gifts or bequests to or for the use of the United States. May 15, 1952, c. 289, § 2, 66 Stat. 72, amended July 9, 1952, c. 600, 66 Stat. 479.

1952 Amendment. Act July 9, 1952, amended section to substitute "estate" for "State" which was a clerical error.

Rehabilitation of Federal Prisoners. Use of Commissary Funds, Federal Prisons, paragraph (22) of this section, by Attorney General to assist Federal prisoners in their rehabilitation, see section 4284 of Title 18, Crimes and Criminal Procedure.

§ 725t. Repealed. July 11, 1947, c. 222, § 4(a), 61 Stat. 309

Section, Act June 26, 1934, c. 756, § 21, 48 Stat. 1235, which related to time of payment of checks drawn on Treasurer of United States and deposit of amount of unpaid checks, is now covered by sections 132-134 of this title.

Effective date. Section 5 of Act July 11, 1947, c. 222, 61 Stat. 309, provided in part that repeal of this section should take effect on July 1, 1947.

1. Dissolved corporation, payment to

Where corporate importer protested customs duties paid on imported rayon yarns as excessive and illegal prior to dissolution of corporation as a part of reorganization plan, and subsequently United States Customs Court rendered judgments for recovery of excessive duties, and Federal General Accounting Office refused payment of checks drawn in payment of judgments on ground of dissolution of payee importer and deposited checks in trust fund in federal treasury, importer's corporate successor and successor's liquidating trustees were entitled to payment of such fund. N. Y. Rayon Importing Co., No. 2 v. U. S., 1946, 64 F.Supp. 684, 105 Ct.Cl. 606, reversed in part on other grounds and dismissed in part on other grounds 67 S. Ct. 601, 329 U.S. 654, 91 L.Ed. 577.

§ 725u. Provision authorizing advancement of money for township surveys repealed

Section, Act June 26, 1934, c. 756, § 22, 48 Stat. 1236, was omitted from Code. It repealed so much of section 843 of Title 43 as authorized Governors of States therein named to advance money for survey of certain townships.

§ 725v. Moneys in registry of any United States courts; disposition; disposition of all fees and other collections; exceptions

(a) Moneys in, or payable into, the registry of any United States court, in the discretion of the court, may be deposited in official checking accounts with the Treasurer of the United States, subject to disbursement on order approved by the court.

(b) All fees and other collections other than moneys referred to in subsection (a) of this section, received by clerks of the United States courts and United States marshals shall be deposited in official checking accounts with the Treasurer of the United States, subject to disbursement by such clerks and marshals. At the close of each accounting period the earned

portions of such fees and collections accruing to the United States shall be deposited into the Treasury of the United States to the credit of the appropriate receipt accounts. The provisions of this subsection shall not apply in the Territory of Alaska, or in the Virgin Islands. June 26, 1934, c. 756, § 23, 48 Stat. 1236, as amended Dec. 21, 1944, c. 631, § 1, 58 Stat. 845.

Subsec. (b) added by Act Dec. 21, 1944, cited to text.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

Federal Rules of Civil Procedure

Deposit in court, see Rules of Civil Procedure, Rule 67.

§ 725w. Survey of inactive and permanent appropriations by Comptroller General; report

The Comptroller General of the United States shall cause a survey to be made of all inactive and permanent appropriations and/or funds on the books of the Government and also funds in the official custody of officers and employees of the United States, in which the Government is financially concerned, for which no accounting is rendered to the General Accounting Office; and he shall submit to the Congress annually, in a special report, his recommendations for such changes in existing law relating thereto as, in his judgment, may be in the public interest. (June 26, 1934, c. 756, § 24, 48 Stat. 1236.)

§ 725x. Existing authorizations unaffected

The provisions of sections 725 to 725z of this title shall not be construed to alter or amend any existing authorization for an appropriation. (June 26, 1934, c. 756, § 25, 48 Stat. 1236.)

§ 725y. Repeal of inconsistent provisions

All Acts and/or parts of Acts inconsistent or in conflict with the provisions of sections 725 to 725z of this title are hereby repealed to the extent of such inconsistency or conflict. (June 26, 1934, c. 756, § 26, 48 Stat. 1236.)

§ 725z. Short title

The short title of sections 725 to 725z of this title shall be the "Permanent Appropriation Repeal Act, 1934." (June 26, 1934, c. 756, § 27, 48 Stat. 1236.)

CHAPTER 12.—THE PUBLIC DEBT

Sec.
734a. Purchase of silver [New].
734b. Sale of silver [New].
734c. Use of Government owned silver for war purposes [New].
738a. Interest-bearing security destroyed, mutilated, defaced, lost or stolen.
(a) Issuance of duplicate; redemption of matured security.
(b) Bond of indemnity; exceptions.
(c) Definitions.
(d) Rules and regulations.
741a. Sale and disposition of bonds, notes, and other securities [New].
742a. Same; by Federal Tax Acts [New].
748a. Consolidation of Liberty bond tax exemptions [New].
752a. Same; convertible; privileges of holders; applicable [New].
754a. Issuance of obligations for purchase as refunding public indebtedness [New].
754b. Interest; discount; price; manner of sale; receivability in payment of taxes; exchange for other obligations [New].
755a. Same; deposit of proceeds of sales of bonds and certificates of indebtedness; limit; reserve requirements not applicable [New].
757a. Gold certificates; issuance authorized [New].
757b. Public debt limit; limitation on obligations issued under Second Liberty loan [New].
757c. United States savings bonds and Treasury savings certificates [New].
(a) Authority to issue; use of proceeds.

Sec.
(b) Issuance on discount or interest-bearing basis; terms and conditions; limitation of purchases; retention of matured bonds.
(c) Exemption from taxation; circulation privilege.
(d) Appropriation for expenses.
(e) Withdrawal of postal savings for purchase of savings bonds.
(f) Postal employees as fiscal agents for issuance, etc., of bonds.
(g) Postal employees as fiscal agents for issuance, etc., of bonds, certificates or stamps.
(h) Redemption of savings bonds; qualifications of paying agents.
(i) Losses resulting from redemption of savings bonds; exemptions from liability; repayments; report to Congress.
757d. Proof of death to support credit allowance in Federal Reserve Bank accounts on transfer, redemption, payment, etc. of Government securities [New].
757e. Acceptance by Treasurer of gifts and bequests of Government securities [New].
761a. Limitations of section 761 as inapplicable to certain savings bond transactions [New].
767a. Same; additional appropriation. [New].
767b. Same; further appropriation [New].
773a. Gold clause securities; payment; exchange of coins or currencies [New].
773b. Same; withdrawal of consent to sue United States; exceptions [New].
773c. Same; manner of payment [New].
773d. Same; definitions of "gold clause" and "securities of the United States" [New].

OBLIGATIONS OF FOREIGN GOVERNMENTS

804a, 804b. [New; Repealed].

Investigation of nonessential Federal expenditures, see note under Subtitle D, preceding Section 3600 of Title 26, Internal Revenue Code.

§ 731. Payment in coin

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

Redemption of currency in gold forbidden, see section 408a of this title.

Title to all gold and bullion transferred to United States, see section 441 of this title.

5. Effect on call for redemption of Liberty Loan bonds

In issuing calls for redemption of Liberty Loan bonds, Secretary of Treasury was not limited by act of 1869, placing restrictions upon redemption by government of interest-bearing bonds, since aim of act was protection of holders of United States obligations not bearing interest, and upon resumption of specie payments in 1879, the aim of the act was achieved and its restrictions are no longer binding. Smyth v. U. S., Md. 1937, 58 S.Ct. 248, 302 U.S. 329, 82 L.Ed. 294.

§ 733. Same; anticipation

The Secretary of the Treasury may anticipate the payment of interest on the public debt, by a period not exceeding one year, from time to time, either with or without a rebate of interest upon the coupons, as to him may seem expedient; and he may sell gold in any amounts, at home or abroad, in such manner and at such rates and upon such terms and conditions as he may deem most advantageous to the public interest, and the proceeds of any gold so sold shall be covered into the general fund of the Treasury: *Provided, however*, That the Secretary of the Treasury may sell the gold which is required to be maintained as a reserve or as security for currency issued by the United States, only to the extent necessary to maintain such currency at a parity with the gold dollar. (As amended Jan. 30, 1934, c. 6, § 9, 48 Stat. 341.)

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

§ 734. Purchase of gold

With the approval of the President, the Secretary of the Treasury may purchase gold in any amounts, at home or abroad, with any direct obligations, coin, or currency of the United States, authorized by law, or with any funds in the Treasury not otherwise appropriated, at such rates and upon such terms and conditions as he may deem most advantageous to the public interest; any provision of law relating to the maintenance of parity, or limiting the purposes for which any of such obligations, coin, or currency, may be issued, or requiring any such obligations to be offered as a popular loan or on a competitive basis, or to be offered or issued at

not less than par, to the contrary notwithstanding. All gold so purchased shall be included as an asset of the general fund of the Treasury. (As amended Jan. 30, 1934, c. 6, § 8, 48 Stat. 341.)

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

Regulations for acquisition and use of gold, see sections 442, 443 of this title.

§ 734a. Purchase of silver

Whenever and so long as the proportion of silver in the stocks of gold and silver of the United States is less than one-fourth of the monetary value of such stocks, the Secretary of the Treasury is authorized and directed to purchase silver, at home or abroad, for present or future delivery with any direct obligations, coin, or currency of the United States, authorized by law, or with any funds in the Treasury not otherwise appropriated, at such rates, at such times, and upon such terms and conditions as he may deem reasonable and most advantageous to the public interest: *Provided*, That no purchase of silver shall be made hereunder at a price in excess of the monetary value thereof: *And provided further*, That no purchases of silver situated in the continental United States on May 1, 1934, shall be made hereunder at a price in excess of 50 cents a fine ounce. (June 19, 1934, c. 674, § 3, 48 Stat. 1178.)

All laws inconsistent with the provisions of this section were repealed by section 734a of this title.

Acquisition and use of silver, see sections 316a, 316b, 316c of this title.

§ 734b. Sale of silver

Whenever and so long as the market price of silver exceeds its monetary value or the monetary value of the stocks of silver is greater than 25 per centum of the monetary value of the stocks of gold and silver, the Secretary of the Treasury may, with the approval of the President and subject to the provisions of section 405a of this title, sell any silver acquired under the authority of sections 311a, 316a, 316b, 405a, 448–448e, 734a, and 734b of this title, at home or abroad, for present or future delivery, at such rates, at such times, and upon such terms and conditions as he may deem reasonable and most advantageous to the public interest. (June 19, 1934, c. 674, § 4, 48 Stat. 1178.)

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

1. Free silver, leasing

The Secretary of the Treasury is authorized to lease or license the use of "free silver" (uncoined silver owned by the Government which need not be held as security for outstanding silver certificates) in place of copper for war production in both Government and privately owned plants under an agreement to assure the return of the silver. 1942, 40 Op. Atty.Gen. 171.

§ 734c. Use of Government owned silver for war purposes

Codification. Section, act July 12, 1943, c. 223, § 1, 57 Stat. 520, which related to selling or leasing of Government owned silver for a period not longer than six months after cessation of hostilities, terminated on Dec. 31, 1945, by the provisions of section 2 of said Act July 12, 1943, as amended Dec. 20, 1944, c. 624, 58 Stat. 837.

The period of the leases authorized by said act July 12, 1943 terminated on July 1, 1947 under the provisions of Proc. No. 2714, 12 F.R. 1, which proclaimed cessation of hostilities of World War II at 12 o'clock noon Dec. 31, 1946. Said Proc. No. 2714 is set out as a note under section 601 of Appendix to Title 50, War and National Defense.

§ 735. Destroyed, defaced, or lost bonds; duplicates [Repealed]

This section, as amended by Act Apr. 9, 1934, c. 105, 48 Stat. 571, was repealed by Act July 8, 1937, c. 444, § 8 (e), 50 Stat. 482, to take effect July 1, 1937.

For provisions with respect to destruction, etc., of interest-bearing security, see section 738a of this title.

§ 736. Same; indemnity for [Repealed]

This section was repealed by Act July 8, 1937, c. 444, § 8 (e), 50 Stat. 482, to take effect July 1, 1937.

For provisions with respect to destruction, etc., of interest-bearing security, see section 738a, post.

§ 737. Lost registered bond; duplicate for [Repealed]

This section was repealed by Act July 8, 1937, c. 444, § 8 (e), 50 Stat. 482, to take effect July 1, 1937.

For provisions with respect to destruction, etc., of interest-bearing security, see section 738a, post.

3. Assigned bonds

A United States bond registered in name of minor and bearing assignment executed by minor's natural guardian in favor of "Secretary of the Treasury for exchange," was stolen from bank having custody of same, held that assignment was invalid and subsequent transferee of the bond could not obtain title to same, and Secretary of the Treasury was authorized by this section to issue duplicate in lieu of the stolen bond. (1929) 38 Op. Atty. Gen. 64.

§ 738. Same; indemnity for [Repealed]

This section was repealed by Act July 8, 1937, c. 444, § 8 (e), 50 Stat. 482, to take effect July 1, 1937.

For provisions with respect to destruction, etc., of interest-bearing security, see section 738a, post.

§ 738a. Interest-bearing security destroyed, mutilated, defaced, lost or stolen—Issuance of duplicate; redemption of matured security

(a) Whenever it is clearly proved to the satisfaction of the Secretary of the Treasury—

(1) That any interest-bearing security of the United States, identified by number and description, payable to bearer or so assigned as to become, in effect, payable to bearer, has been wholly or partly destroyed, or so mutilated or defaced as to impair its value to the owner, or has been lost or stolen under such circumstances, and such a period of time having elapsed after it has matured or has become redeemable pursuant to a call for redemption, as in the judgment of the Secretary would indicate that it has been destroyed or irretrievably lost, is not held by any person as his own property and will never become the basis of a valid claim against the United States; or

(2) That any interest-bearing security of the United States, identified by number and description, which is not payable to bearer and which has not been so assigned as to become, in effect, payable to bearer, has been lost or stolen, so that it is not held by any person as his own property, or has been wholly or partly destroyed, or so mutilated or defaced as to impair its value to the owner;

the Secretary, upon receipt and approval by him of a bond of indemnity, if and as required by subsection (b) hereof, shall, in the case of a security which has not matured or become redeemable pursuant to a call for redemption, issue a substitute marked "duplicate" and showing the serial number of the original security; or shall, in the case of a security which has matured or become redeemable pursuant to a call for redemption, make payment thereof to the owner, with such interest only as would have been paid had the security been presented when it became due and payable: *Provided*, That in the case of an interim certificate relief may be given by the issue of a definitive security, whether before or after maturity, rather than by the issue of a substitute or by payment: *And provided further*, That no payment shall be made on account of interest coupons claimed to have been attached to such original security unless the Secretary is satisfied that such coupons have not been paid, and are in fact destroyed or can never become the basis of a valid claim against the United States.

Bond of indemnity; exceptions

(b) Except as provided in paragraphs (1) to (4) of this subsection, the owner of such lost, stolen, destroyed, mutilated, or defaced security shall file with the Secretary of the Treasury a bond, to indemnify the United States, in such form and amount and with such surety, sureties, or security as the Secretary of the Treasury shall require: *Provided*, That in case of securities payable to bearer or so assigned as to become, in effect, payable to bearer, the destruction of which has not been proved, a corporate surety, qualified under sections 6 to 13 of Title 6, shall be required on such bond of indemnity: *And provided further*, That a bond of indemnity shall not be required in any of the following classes of cases, except as provided in paragraph (4) of this subsection:

(1) If the Secretary of the Treasury is satisfied that the loss, theft, destruction, mutilation, or defacement, as the case may be, occurred without

fault of the owner and while the security was in the custody or the control of the United States (not including the Postal Service when acting solely in its capacity as the public carrier of the mails), or of a person thereunto duly authorized as lawful agent of the United States, or while it was in the course of shipment effected pursuant to and in accordance with the regulations issued under section 134 of Title 5;

(2) If substantially the entire security is presented and surrendered by the owner and the Secretary of the Treasury is satisfied as to the identity of the security presented and that any missing portions are not sufficient to form the basis of a valid claim against the United States:

(3) If the lost, stolen, destroyed, mutilated, or defaced security is one which by the provisions of law or by the terms of its issue is transferable only by operation of law;

(4) If the owner or holder is the United States or an officer or employee thereof in his official capacity, a State, the District of Columbia, a Territory or possession of the United States, including the Commonwealth of the Philippine Islands, a municipal corporation or political subdivision of any of the foregoing, a corporation the whole of whose capital is owned by the United States, a foreign government, or a Federal Reserve bank:

Provided, however, That in any of the foregoing classes of cases the Secretary of the Treasury may require a bond of indemnity if he deems it essential to the public interest.

Definitions

(c) The term "interest-bearing security of the United States" or "security", wherever used in this section, means any direct obligation of the United States issued pursuant to law for valuable consideration and which by its terms bears interest, or is issued on a discount basis, and includes (but is not limited to) bonds, notes, certificates of indebtedness, and Treasury bills, and interim certificates issued for any such security, and also means any bond issued under section 780 of Title 26.

Rules and regulations

(d) The Secretary of the Treasury shall have the power to make such rules and regulations as he may deem necessary for the administration of this section. July 8, 1937, c. 444, § 8(a)–(d), 50 Stat. 481, as amended Aug. 10, 1939, c. 665, § 4, 53 Stat. 1359; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, § 153, 59 Stat. 574.

Subsec. (b), par. (4) amended by Act Aug. 10, 1939, cited to credit.

Subsec. (c) amended by Act Nov. 8, 1945, § 153, cited to text, which added ", and also means any bond issued under section 780 of Title 26" at the end of the section.

Act July 8, 1937, § 8, cited to text and the source of this section, contained a subsec. (e) at the end thereof, repealing sections 735–738 of this title.

Congressional Comment: For legislative history and purpose of Act Nov. 8, 1945, cited to text, see 1945 U.S.Code Cong.Service, p. 814.

§ 741a. Sale and disposition of bonds, notes, and other securities

(a) Notwithstanding the provisions of section 302 of Title 40, the Secretary of the Treasury is authorized to sell, exchange, or otherwise dispose of any bonds, notes, or other securities, acquired by him on behalf of the United States under judicial process or otherwise, or delivered to him by an executive department or agency of the United States for disposal, or to enter into arrangements for the extension of the maturity thereof, in such manner, in such amounts, at such prices, for cash, securities, or other property, or any combination thereof, and upon such terms and conditions as he may deem advisable and in the public interest. No such bonds, notes, or other securities of any single issuer having at the date of disposal an aggregate face or par value, or in the case of no-par stock an aggregate stated or book value, in excess of $1,000,000, which may be held by the Secretary of the Treasury at any one time, shall be sold or otherwise disposed of under the authority of this section.

(b) Nothing contained in this section shall be construed to supersede or impair any authority otherwise granted to any officer or executive department or agency of the United States to sell, exchange, or otherwise dispose of any bonds, notes, or other securities, acquired by the United States under judicial process or otherwise. Apr. 3, 1945, c. 51, § 5, 59 Stat. 48.

Congressional Comment: For legislative history and purpose of Act Apr. 3, 1945, cited to text, see 1945 U.S.Code Cong.Service, p. 677.

§ 742. Exemption from taxation; by State or local authority

United States obligations and evidences of ownership issued after March 27, 1942, as subject to Federal taxation, see section 742a of this title.

½. Purpose

This section generally exempting interest-bearing obligations of the United States from state and local taxation was enacted to prevent taxes which diminish in the slightest degree the market value or investment attractiveness of obligations issued by the United States in an effort to secure necessary credit. New Jersey Realty Title Ins. Co. v. Division of Tax Appeals in Dept. of Taxation and Finance of N. J., N.J.1950, 70 S.Ct. 413, 338 U.S. 665, 94 L.Ed. 439.

2. Validity of state laws

A tax imposed on a domestic stock insurance corporation and levied in the amount of 15 percent against capital and surplus less liabilities or against entire net worth computed without deduction of principal amount of tax-exempt United States bonds and accrued interest thereon, under N.J.S.A. 54:4-22 imposing a tax on value of property exclusive of tax-exempt property, but requiring assessment against intangible personalty of not less than 15 percent of capital stock and surplus in excess of liabilities, was invalid as in conflict with this section generally exempting interest-bearing obligations of the United States from state and local taxation, and could not be sustained as a tax levied on the corporate franchise. New Jersey Realty Title Ins. Co. v. Division of Tax Appeals in Dept. of Taxation and Finance of N. J., N.J.1950, 70 S.Ct. 413, 338 U.S. 665, 94 L.Ed. 439.

A state tax on corporate capital measured by federal securities may be invalid even though imposed without discrimination against the federal obligations. Id.

3. Taxability in general

See also notes under Const. Art. 1, sec. 8, cl. 2.

Statute requiring insurance companies to pay tax on value of assets in excess of required reserve and unpaid claims as construed to require reserve and unpaid claims to be reduced by proportion that value of government bonds bears to total assets held invalid. State ex rel. Missouri Ins. Co. v. Gehner (1930) 50 S. Ct. 326, 281 U.S. 313, 74 L.Ed. 870.

The liens imposed for taxes assessed against the several properties of the United States Housing Corporation by municipality and school district while agreements for sale of the properties to private purchasers were extant did not constitute "vested rights" which could not be destroyed by cancellation of the sales agreements and restoration of title to the properties in the United States Housing Corporation by foreclosure of the purchasers' rights under the agreements. U. S. v. City of Philadelphia, C. C.A.Pa.1944, 140 F.2d 406.

Property owned by the United States or owned by its instrumentalities for its use and benefit is not subject to taxation by the states or their subdivisions, but tax may be levied against equitable interest of purchaser from the United States or its instrumentalities where purchaser is entitled to conveyance under his contract. Id.

4. Securities exempt

This section and section 425 of this title are a clarification of congressional intent to immunize from state taxation only the interest-bearing obligations of the United States which are needed to secure credit to carry on the necessary functions of government, which intent should not be expanded or modified in any degree by the judiciary. Smith v. Davis, Ga.1944, 65 S.Ct. 157, 323 U.S. 111, 89 L.Ed. 107.

Under rule of ejusdem generis, the words "other obligations" in this section, refer only to obligations or securities of the same type as those specifically enumerated. Id.

6½. —— Other obligations

Under this section "other obligations" does not include claim of corporation listed as asset on its books against United States for refund of federal income taxes on account of accelerated depreciation of war facility whether amount was agreed upon or not so as to exempt claim from inter county personal property tax. Glidden Co. v. Glander, 1949, 86 N.E.2d 1, 151 Ohio St. 344, 9 A.L.R.2d 515.

10. Interest and income from exempt securities

This section generally exempting interest-bearing obligations of the United States from state and local taxation also exempts accrued but unpaid interest on federal securities. New Jersey Realty Title Ins. Co. v. Division of Tax Appeals in Dept. of Taxation and Finance of N. J., N.J.1950 70 S.Ct. 413, 338 U.S. 665, 94 L.Ed. 439.

11. Debts due from United States

An open account claim against the United States does not represent a "credit instrumentality of the United States" within constitutional immunity from state and local taxation of all properties, functions, and instrumentalities of the federal government. Smith v. Davis, Ga. 1944, 65 S.Ct. 157, 323 U.S. 111, 89 L.Ed. 107.

This section does not apply to an open account claim of a creditor of United States. Id.

12. Exempt securities held by corporations as affecting taxation—Valuation of corporate stock

Statute taxing moneys and credits and moneyed capital held not invalid as taxing shares of state banking corporations solely because of their ownership of United States securities. Bank of Miles City v. Custer County (1933) 19 P.(2d) 885, 93 Mont. 291.

14. —— Taxability of corporation upon capital stock

54 N.J.S.A.4-22 imposing a tax on paid-up capital and surplus of stock insurance companies in excess of liabilities is not invalid, even if intended to include capital and surplus composed of United States securities, since such invalid provision for taxation of such exempt property may be severed without impairing remainder of 54 N.J.S.A. 4-22. New Jer-

sey Realty Title Ins. Co. v. Division of Tax Appeals, 1948, 60 A.2d 265, 137 N.J. L. 444, reversed 64 A.2d 341, 1 N.J. 496.

Taxation of stock insurance company's paid-up capital and surplus composed of bonds issued by the United States would constitute taxation of such exempt property itself. Id.

§ 742a. Same; by Federal tax Acts

(a) Interest upon obligations, and dividends, earnings, or other income from shares, certificates, stock, or other evidences of ownership, and gain from the sale or other disposition of such obligations and evidences of ownership issued on or after March 28, 1942, by the United States or any agency or instrumentality thereof shall not have any exemption, as such, and loss from the sale or other disposition of such obligations or evidences of ownership shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto; except that any such obligations which the United States Maritime Commission or the Federal Housing Administration had, prior to March 1, 1941, contracted to issue at a future date, shall when issued bear such tax-exemption privileges as were, at the time of such contract, provided in the law authorizing their issuance. For the purposes of this subsection a Territory, a possession of the United States, and the District of Columbia, and any political subdivision thereof, and any agency or instrumentality of any one or more of the foregoing, shall not be considered as an agency or instrumentality of the United States.

(b) The provisions of this section shall, with respect to such obligations and evidences of ownership, be considered as amendatory of and supplementary to the respective Acts or parts of Acts authorizing the issuance of such obligations and evidences of ownership, as amended and supplemented.

(c) Nothing contained herein shall be construed to amend or repeal sections 114 and 115 of the Revenue Act of 1941. Feb. 19, 1941, c. 7, § 4, 55 Stat. 9, amended Mar. 28, 1942, c. 205, § 6, 56 Stat. 190; June 25, 1947, c. 147, 61 Stat. 180.

Transfer of Functions. All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by 1949 Reorg. Plan No. 6, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1069. See note set out under section 1111 of Title 46, Shipping.

Reference in text. Internal Revenue Code referred to in subsec. (a) is contained in Title 26, Internal Revenue Code.

Revenue Act of 1941, §§ 114 and 115, referred to in subsec. (c), affected sections 42 and 117(a) (1) of Title 26, Internal Revenue Code.

Amendments. Subsec. (a) amended by Act June 25, 1947, cited to text, which substituted "the Internal Revenue Code, or laws amendatory or supplementary thereto" for "Federal tax Acts now or hereafter enacted", to eliminate any doubt as to the intended scope of taxability of Federal securities.

Act Mar. 28, 1942, cited to text, amended section generally. Prior thereto, section had consisted of subsecs. (a) and (b) only.

Abolishment of Commission and transfer of functions. The United States Maritime Commission was abolished by 1950 Reorg.Plan No. 21, eff. May 24, 1950, 15 F. R. 3178, 64 Stat. 1273, set out in note under section 1111 of Title 46, Shipping, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the chairman of said Federal Maritime Board should, ex officio, be such Administrator.

Congressional Comment: For legislative history and purpose of Act June 25, 1947, cited to text, see 1947 U.S.Code Cong.Service, p. 1217.

1. Items taxable

Stocks, bonds, treasury bonds and other obligations of the United States are exempt from taxation by or under state authority, but such exemption does not extend to interest upon obligations, or dividends, earnings or other income upon shares, certificates, stocks or other evidences of ownership, or to gain from sale or other disposition of such obligations and evidences of ownership issued on or after March 28, 1942, by the United States or any agency or instrumentality thereof. New Jersey Realty Title Ins. Co. v. Division of Tax Appeals, 1948, 60 A.2d 265, 137 N.J.L. 444, reversed on other grounds 64 A.2d 341, 1 N.J. 496, reversed on other grounds 70 S.Ct. 413, 338 U.S. 665, 94 L.Ed. 439.

2. Validity of state laws

Where this section made liable to federal income tax interest and gains on obligations of United States issued after March 1, 1941, as result of which the state franchise tax on corporations by reason of the adoption of the federal income tax returns as basis of such state franchise tax included federal securities and excluded state securities in determining amount of such franchise tax, 72 P.S. section 3420a et seq. became discriminatory against securities of the

United States and to that extent is unconstitutional. Com. v. Curtis Pub. Co., 1949, 69 A.2d 410, 363 Pa. 299, certiorari denied 70 S.Ct. 627, 339 U.S. 928, 94 L.Ed. 1349.

That discrimination against federal securities by state act was not intended by the state but resulted from the passage of this section did not render the discrimination any the less unconstitutional, since the constitutionality of a statute cannot be determined by a consideration of the motives behind its enactment. Id.

§ 743. Panama Canal bonds to have rights and privileges of other bonds

Words "32 Stat. 484" should be inserted after "chapter 1302".

Acts and parts of acts inconsistent with sections 315b, 408b, 441–446, 821, and 822a of this title as repealed, see section 446 of this title.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

§ 744. Redemption, payment, and exemption from taxes of Panama Canal bonds

"June 5, 1933, c. 48, § 1, 48 Stat. 113" should be added to credit.

Acts and parts of acts inconsistent with sections 315b, 408b, 441–446, 821, and 822a of this title as repealed, see section 446 of this title.

Compensation of certain civilian positions in the field service to be adjusted by the heads of the several executive departments and establishments see sections 678, 678a of Title 5, Executive Departments, Government Officers and Employees.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

"Legal tender coin or currency" has been substituted for "gold coin" in this section on authority of section 463 of this title which prohibits payment of obligations in gold.

§ 745. Payment, interest, and exemption from taxes of Panama Canal bonds

Bonds issued under authority of section 39 of the Act of August 5, 1909 (chapter 6, Thirty-sixth Statutes, page 117), shall be payable at such times within fifty years after the date of issue as the Secretary of the Treasury, in his discretion, may deem advisable, and bear interest payable quarterly in legal tender coin or currency at a rate not exceeding 3 per centum per annum; and such bonds shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. Aug. 5, 1909, c. 6, § 39, 36 Stat. 117; June 3, 1916, c. 134, § 124, 39 Stat. 215; Sept. 7, 1916, c. 451, § 13, 39 Stat. 732; Mar. 3, 1917, c. 159, § 400, 39 Stat. 1002; Apr. 24, 1917, c. 4, § 4, 40 Stat. 36; Sept. 24, 1917, c. 56, § 11, 40 Stat. 292; June 5, 1933, c. 48, § 1, 48 Stat. 113.

"Legal tender coin or currency" has been substituted for "gold coin" in this section on authority of section 463 of this title which prohibits payment of obligations in gold.

Acts and parts of acts inconsistent with sections 315b, 408b, 441–446, 821 and 822a of this title, as repealed, see section 446 of this title.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

United States obligations and evidences of ownership issued after March 27, 1942, as subject to Federal taxation, see section 742a of this title.

§ 746. Payment, interest, exemption from taxes, etc., of First Liberty bonds

"June 5, 1933, c. 48, § 1, 48 Stat. 113" should be added to credit.

"Legal tender coin or currency" was substituted for "gold coin" in this section on authority of section 463 of this title which prohibits payment of obligations in gold.

Acts and parts of acts inconsistent with sections 315b, 408b, 441–446, 821 and 822a of this title, as repealed, see section 446 of this title.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

United States obligations and evidences of ownership issued after March 27, 1942, as subject to Federal taxation, see section 742a of this title.

2. Exemption from taxation

The first Liberty Loan bonds which were exempt as to principal and interest under this section and covenant in bonds, "from all taxation, except estate or inheritance taxes," were subject to gift taxes. Phipps v. Commissioner of Internal Revenue, C.C.A.Colo.1937, 91 F.2d 627, 112 A.L.R. 1441, certiorari denied 58 S.Ct. 144, 302 U.S. 742, 82 L.Ed. 575.

The maxim that a taxing statute should be liberally construed in favor of the taxpayer does not apply in dealing with an asserted exemption from taxation. Id.

A provision of this section authorizing government bond issue exempting bonds

from taxation as to principal and interest, without more, relates exclusively to ad valorem or other direct taxes on them as property, and hence such bonds may be subjected to payment of an inheritance tax or an estate tax because such an indirect tax is an excise on the transmission of the property, and not a tax on the property eo nomine. Id.

The reason, wisdom, or policy underlying the exception of estate and inheritance taxes from exemption from taxation of first Liberty Loan bonds was exclusively for Congress. Id.

The exemption is applicable to the District of Columbia as well as to the states. District of Columbia v. Riggs Nat. Bank (1929) 30 F.(2d) 873, 58 App. D. C. 349, certiorari denied 49 S.Ct. 343, 279 U.S. 846, 73 L.Ed. 991.

A tax on the gross earnings of a bank cannot be levied on that part of the earnings which are derived from the income of tax exempt government bonds. Id.

Where principal purpose of taxpayer in investing money in Liberty Bonds and treasury notes was to avail itself of interest to offset interest paid on borrowed money, securities were none the less exempt from taxation, although taxpayer might have intended thereby to also escape assessment for taxation under peculiar taxing system of state. City of Dallas v. Higginbotham-Bailey-Logan Co. (C. C. A. Tex. 1930) 37 F.(2d) 513.

The exemption from taxation accorded by this section cannot be evaded by the subterfuge of taxing the owner with their money value. Id.

A federal district court has jurisdiction to enforce by injunction the immunity from local taxation imposed by this section. Id.

7. Rights and liabilities respecting Liberty bonds

The holders of Liberty Loan gold bonds became entitled, when once notice calling bonds for redemption had been published, to a measure and medium of payment sufficient to discharge the debts. Smyth v. U. S., Md.1937, 58 S.Ct. 248, 302 U.S. 329, 82 L.Ed. 294.

The government was not subject to a duty to keep content of dollar constant during period intervening between promise made by issuance of Liberty Loan gold bonds and performance. Id.

Where Liberty Loan bonds provided for acceleration of maturity at pleasure of government, upon publication of notice of call for period stated in bonds the new date became substituted for the old one as if there from the beginning, as regards bondholder's right to interest after the accelerated date. Id.

11. Notice of call for redemption

Where Secretary of Treasury published notice of call for redemption of Liberty Loan bonds at an accelerated date, default, if any, did not entitle bondholder to interest after the accelerated maturity date. Smyth v. U. S., Md.1937, 58 S.Ct. 248, 302 U.S. 329, 82 L. Ed. 294.

Notices of call for redemption of Liberty Loan gold bonds were adequate to accelerate maturity and preclude running of interest after the accelerated date, as against contention that notices of call were to be construed as if the notices incorporated joint resolution making obligations purporting to be payable in gold payable in legal tender, and that, therefore, notices were nullities because payment promised was not payment owing under bonds. Id.

Where statutes under which Liberty Loan bonds were issued provided that bonds should be subject to terms of redemption which Secretary of Treasury should prescribe and bonds provided for acceleration of maturity by publication of call for redemption, Secretary of Treasury did not act in excess of his lawful powers by issuing calls for redemption without further authority from Congress than was conferred by such statutes. Id.

Published notice of call for redemption of Liberty Loan gold bonds accelerated the maturity of the bonds, and as a consequence of such acceleration bondholder's right to interest ceased after the accelerated date, irrespective of validity of legislation devaluing the dollar. Id.

§ 747. Tax exemptions; second and subsequent Liberty loans

The words "on September 24, 1917, or thereafter" in lines 4, 8 and 9 should be omitted.

United States obligations and evidences of ownership issued after March 27, 1942, as subject to Federal taxation, see section 742a of this title.

1. Exemption from taxation

Income from Liberty bonds, owned by domestic corporation may not be taxed by state under guise of excise tax on said corporations for privilege of doing business, the tax being measured by net income received by the corporation as shown in its return to United States government under federal Revenue laws. Macallen Co. v. Commonwealth of Massachusetts (1929) 49 S. Ct. 432, 279 U. S. 620, 73 L. Ed. 874, rehearing denied 50 S.Ct. 14, 280 U.S. 513, 74 L.Ed. 585.

Where foreign life insurance company had been allowed a deduction from its statutory gross income from United States sources of only about 14 per cent. of its tax exempt interest, the insurance company was not entitled to recover income tax paid on theory that balance of tax exempt interest had been subjected to taxation in violation of terms of this section, in absence of showing that balance of tax exempt interest exceeded amount of insurance company's gross income derived from sources within the United States excluded from taxation. Manufacturers Life Ins. Co. v. U. S., 1940, 32 F.Supp. 284, 91 Ct.Cl. 466.

Right of bank to treat as exempt income interest received by clipping coupons and also directly from purchasers of Liberty and Victory bonds purchased by bank and sold to subscribers, denied for want of evidence as to amount of interest collected in tax year. 2 B. T. A. 286.

§ 748. Additional Liberty bond tax exemptions. [Repealed.]

This section was repealed by § 1200 of Act Feb. 26, 1926, c. 27, 44 Stat. 125, to take effect as of that date. Part of the subject matter was reenacted by § 1125 of said Act of 1926 (44 Stat. 122) which constitutes § 748a of this title.

§ 748a. Consolidation of Liberty bond tax exemptions

Section, Act Feb. 26, 1926, c. 27, § 1125, 44 Stat. 122, was omitted from the Code. It exempted Liberty bonds from certain taxes for from two to five years from January 1, 1921.

§ 749. First, second, third, and fourth Liberty loans; bonds; exemption from taxation

Section expired by its own limitations and has been omitted from the Code.

1. Bonds purchased at discount

Federal income tax on profit from sale of Liberty bonds purchased at less than par held not tax on principal thereof and hence not violative of statute exempting principal and interest of bonds from taxation. Central Hanover Bank & Trust Co. v. U. S., 1936, 14 F.Supp. 541, 83 Ct.Cl. 401, certiorari denied 57 S.Ct. 668, 300 U.S. 678, 81 L.Ed. 882.

Federal income tax on profit from sale of Liberty bonds purchased at less than par held not objectionable as being tax by government on its own bonds. Id.

§ 750. Bonds and certificates of indebtedness beneficially owned by nonresident aliens not engaged in business in United States exempt from taxation

Notwithstanding the provisions of sections 745, 747, 752–754b, 757, 757b, 757c, 758, 760, 764–766, 769, 771, 773, 774, and 801 of this title, or of any other law, bonds, notes, and certificates of indebtedness of the United States and bonds of the War Finance Corporation shall, while beneficially owned by a nonresident alien individual, or a foreign corporation, partnership, or association, not engaged in business in the United States, be exempt both as to principal and interest from any and all taxation imposed on July 9, 1918, or thereafter by the United States, any State, or any of the possessions of the United States, or by any local taxing authority. July 9, 1918, c. 142, § 3, 40 Stat. 845; Mar. 3, 1919, c. 100, § 4, 40 Stat. 1311.

Section formerly referred to the War Finance Corporation Act. This reference has been deleted because the War Finance Corporation has been dissolved rendering that act obsolete.

United States obligations and evidences of ownership issued after March 27, 1942, as subject to Federal taxation, see section 742a of this title.

1. Bonds held by executor

Liberty bonds were taxable while held by the executor of a nonresident alien testator. Jeffress v. Commonwealth, 1929, 146 S.E. 296, 152 Va. 100.

2. Gift tax

Tax Court's finding that conversion of domestic stocks and bonds into United States Treasury notes was solely for the purpose of making tax-exempt gifts in trust was sustained by the evidence and holding that the gifts were not tax-exempt was proper. De Goldschmidt-Rothschild v. C. I. R., C.C.A.2, 1948, 168 F.2d 975.

Where taxpayer, a nonresident alien, owned certain domestic stocks and bonds which she converted into United States Treasury notes under a prearranged program or understanding and solely for the purpose of making a gift of such notes in trust, within the gift tax exemption provisions of this section, such conversion was ineffectual to avoid gift tax under section 1000 et seq. of Title 26. De Goldschmidt-Rothschild v. C. I. R., 1947, 9 T. C. 325.

3. Estate tax

United States bonds issued after as well as before March 1, 1941, and physically located within United States, should be excluded from taxable gross estate of nonresident alien not doing business in United States, under this section exempting United States securities beneficially owned by such aliens from "taxation"; the term not being restricted to property taxes. Jandorf's Estate v. C. I. R., C.A.2, 1948, 171 F.2d 464.

United States bonds issued after March 1, 1941, which were owned by nonresident alien individual who did no business in United States, and which were physically located in United States, should be excluded from taxable gross estate of non-resident alien, for federal estate tax purposes, under this section exempting United States securities beneficially owned by such aliens from taxation. Pennsylvania Co. for Banking & Trusts v. U. S., D.C.Pa.1950, 91 F.Supp. 237, affirmed 185 F.2d 125.

This section does not exclude from gross estate United States bonds issued after 1941 and physically situated in the United States at time of death of nonresident alien who was not doing business here. Estate of Jandorf v. C. I. R., 1947, 9 T.C. 338.

§ 751. Consols of 1930, interest, payment, exemption from taxes

Acts and parts of acts inconsistent with sections 315b, 408b, 441–446, 821, and 822a of this title as repealed, see section 446 of this title.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

United States obligations and evidences of ownership issued after March 27, 1942, as subject to Federal taxation, see section 742a of this title.

§ 752. Second, third, and fourth Liberty loans; amount; bonds

The Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of sections 745, 747, 752–754b, 757, 757b, 757c, 758, 760, 764–766, 769, 771, 773, 774, and 801 of this title, to provide for the purchase, redemption, or refunding, at or before maturity, of any outstanding bonds, notes, certificates of indebtedness, or Treasury bills of the

United States, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor bonds of the United States. (As amended Mar. 3, 1931, c. 433, 46 Stat. 1506; Feb. 4, 1935, c. 5, § 1, 49 Stat. 20; May 26, 1938, c. 285, § 1, 52 Stat. 447.)

* * * * * * * * * *

Notwithstanding the provisions of the foregoing paragraph, the Secretary of the Treasury may from time to time, when he deems it to be in the public interest, offer such bonds otherwise than as a popular loan and he may make allotments in full, or reject or reduce allotments upon any applications whether or not the offering was made as a popular loan. (As amended Jan. 30, 1934, c. 6, § 14 (a) (1), 48 Stat. 343.)

Wherever the words "bonds herein authorized" appears the words "bonds authorized in this section" should be substituted. "Legal tender coin or currency" should be substituted for "Gold Coin" on authority of section 463 of this title which prohibits payment of obligations in gold.

"June 5, 1933, c. 48, § 1, 48 Stat. 113" should be added to the credit.

Acts and parts of acts inconsistent with sections 315b, 408b, 441–446, 821 and 822a of this title as repealed, see section 446 of this title.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

Purposes for which securities may be issued under this section extended to include purchases by Secretary of the Treasury of bonds of Home Owners' Loan Corporation, see section 1463 (c) of Title 12, Banks and Banking.

Issuance under this section of special obligations directly to Unemployment Trust Fund, see section 1104 (b) of Title 42, The Public Health and Welfare.

See note under section 747 of this title.

Issuance under the Second Liberty Bond Act of special obligations exclusively to the "Federal Old-Age and Survivors Insurance Trust Fund," see section 401(c) of Title 42, The Public Health and Welfare.

½. Constitutionality

Section 747 et seq. of this title is a valid exercise by Congress of its power under U.S.C.A.Const. art. 1, § 8, cl. 2 to borrow money on the credit of the United States. Davies v. Beach, 1946, 168 P. 2d 452, 74 Cal.App.2d 304.

3. Gold clause

The holder of a Fourth Liberty Loan 4¼ per cent. bond payable in United States gold coin "of the present standard of value" was not entitled to receive from the United States an amount in legal tender currency equivalent in value to the actual amount of gold promised in the bond. Bakewell v. U. S., C.C.A.Mo. 1940, 110 F.2d 564, certiorari denied 60 S.Ct. 1081, 310 U.S. 638, 84 L.Ed. 1407.

4. Ownership of bonds, regulations

This section did not authorize the Secretary of the Treasury to fix title to or ownership of bonds or money owing thereon by regulation, nor was any such power given by Treasury Department regulation, providing that bonds registered in names of two or mere persons or two persons or survivor are deemed held in joint ownership, with right of survivorship, and that assignments by all co-owners shall be required in cases of transfer or exchange into coupon bonds. Sinift v. Sinift, 1940, 293 N.W. 841, 229 Iowa 56.

5. Regulations, force of

The regulations of the Treasury Department under which United States savings bonds are issued have the force of federal law. Davies v. Beach, 1946, 168 P.2d 452, 74 Cal.App.2d 304.

Generally, regulations promulgated under federal statutes declaring bonds issued thereunder subject to terms and conditions prescribed by Secretary of Treasury have force of law and must be considered part of conditions of such bonds. Conrad v. Conrad, 1944, 152 P.2d 221, 66 Cal.App.2d 280.

6. Joint ownership

On death of one furnishing money to pay for United States savings bonds owned by him and another jointly, they become surviving co-owner's property, with no interest left in deceased owner's estate. Conrad v. Conrad, 1944, 152 P.2d 221, 66 Cal.App.2d 280.

United States savings bonds, purchased by agent and issued in names of principal or agent as co-owners at principal's direction, belong to agent, not to principal's estate, after principal's death, in absence of breach of trust by agent. Id.

7. Nature of obligation

A United States savings bond, issued under, section 747 et seq. of this title, and the regulations of the Treasury Department, is a contract obligation of the United States to the owner and to the beneficiary severally. Davies v. Beach, 1946, 168 P.2d 452, 74 Cal.App.2d 304.

§ 752a. Same; convertible; privileges of holders; applicable provisions

In connection with the issue of any series of bonds under the authority of section 752 of this title the Secretary of the Treasury may determine that the bonds of such series shall be convertible as provided in or pursuant to this section, and, in any such case, he may make appropriate provision to that end in offering for subscription the bonds of such series (hereinafter called convertible bonds). In any case of the issue of a series of convertible bonds, if a subsequent series of bonds (not including United States certificates of indebtedness, war-savings certificates,

and other obligations maturing not more than five years from the issue of such obligations, respectively) bearing interest at a higher rate shall under the authority of sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764–766, 769, 771, 773, 774, and 801 of this title, or any other Act, be issued by the United States before the termination of the war between the United States and the Imperial German Government, then the holders of such convertible bonds shall have the privilege, at the option of the several holders, at any time within such period, after the public offering of bonds of such subsequent series, and under such rules and regulations as the Secretary of the Treasury shall have prescribed, of converting their bonds, at par, into bonds bearing such higher rate of interest at such price not less than par as the Secretary of the Treasury shall have prescribed. The bonds to be issued upon such conversion under said sections shall be substantially the same in form and terms as shall be prescribed by or pursuant to law with respect to the bonds of such subsequent series, not only as to interest rate but also as to convertibility (if future bonds be issued at a still higher rate of interest) or nonconvertibility, and as to exemption from taxation, if any, and in all other respects, except that the bonds issued upon such conversion shall have the same dates of maturity, of principal, and of interest, and be subject to the same terms of redemption before maturity, as the bonds converted; and such bonds shall be issued from time to time if and when and to the extent that the privilege of conversion so conferred shall arise and shall be exercised. If the privilege of conversion so conferred under the aforesaid sections of this title shall once arise, and shall not be exercised with respect to any convertible bonds within the period so prescribed by the Secretary of the Treasury, then such privilege shall terminate as to such bonds and shall not arise again, though again thereafter bonds be issued bearing interest at a higher rate or rates.

Holders of bonds bearing interest at a higher rate than four per centum per annum, whether issued (a) under section 752 of this title, or (b) upon conversion of four per centum bonds issued under said section, or (c) upon conversion of three and one-half per centum bonds issued under sections 745, 746, 755, 759, 764, 771, 774, and 804 of this title, or (d) upon conversion of four per centum bonds issued upon conversion of such three and one-half per centum bonds, shall not be entitled to any privilege of conversion under or pursuant to this section or otherwise. The provisions of sections 747 and 758 of this title shall extend to all such bonds.

If bonds bearing interest at a higher rate than four per centum per annum shall be issued before July first, nineteen hundred and eighteen, then any bonds bearing interest at the rate of four per centum per annum which shall, after July first, nineteen hundred and eighteen, and before the expiration of the six months' conversion period prescribed by the Secretary of the Treasury, be presented for conversion into bonds bearing interest at such higher rate, shall, for the purpose of computing the amount of interest payable, be deemed to have been converted on the dates for the payment of the semiannual interest on the respective bonds so presented for conversion, last preceding the date of such presentation. (Sept. 24, 1917, c. 56, § 4, 40 Stat. 290; Apr. 4, 1918, c. 44, § 3, 40 Stat. 504.)

§ 753. United States notes

(a) Authority to issue; amount; forms and denominations; interest; payment and redemption. In addition to the bonds and certificates of indebtedness and war-savings certificates authorized by sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764–766, 769, 771, 773, 774, and 801 of this title, the Secretary of the Treasury, with the approval of the President, is authorized, subject to the limitation imposed by section 757b of this title, to borrow from time to time on the credit of the United States for the purposes of said sections, to provide for the purchase, redemption, or refunding, at or before maturity, of any outstanding

bonds, notes, certificates of indebtedness, or Treasury bills of the United States, and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary and to issue therefor notes of the United States at not less than par (except as provided in section 754b of this title) in such form or forms and denomination or denominations, containing such terms and conditions, and at such rate or rates of interest, as the Secretary of the Treasury may prescribe, and each series of notes so issued shall be payable at such time not less than one year nor more than five years from the date of its issue as he may prescribe, and may be redeemable before maturity (at the option of the United States) in whole or in part, upon not more than one year's nor less than four months' notice, and under such rules and regulations and during such period as he may prescribe.

* * * * * * * * * * * * *

(d) No circulation privileges; payment in currency and coin; "bond" or "bonds" defined

None of the notes authorized by this section shall bear the circulation privilege. The principal and interest thereof shall be payable in United States legal tender coin or currency of the present standard of value. The word "bond" or "bonds" where it appears in sections 760, 765, 771 and 773 of this title and section 84 of Title 12, but in such sections only, shall be deemed to include notes issued under this section. Sept. 24, 1917, c. 56, § 18, as added, Mar. 3, 1919, c. 100, § 1, 40 Stat. 1309, and amended Nov. 23, 1921, c. 136, § 1401, 42 Stat. 321; June 5, 1933, c. 48, § 1, 48 Stat. 113; Jan. 30, 1934, c. 6, § 14 (a), 48 Stat. 343; Feb. 4, 1935, c. 5, § 4, 49 Stat. 20; July 8, 1937, c. 444, § 8 (e), 50 Stat. 482.

Reference to sections 735–738 of this title has been deleted from subd. (d) of this section because those sections were repealed by Act July 8, 1937, c. 444, § 8 (e), 50 Stat. 482.

In subsec. (b), opening paragraph, "herein authorized" should read "authorized in this section".

Words "legal tender coin or currency" have been substituted for "gold coin" in subsection (d) on authority of section 463 of this title which prohibits payment of obligations in gold.

Purchases of obligations under Defense Production Act of 1950, see section 2094(b) of Appendix to Title 50, War and National Defense.

United States obligations and evidences of ownership issued after March 27, 1942, as subject to Federal taxation, see section 742a of this title.

See sections 315b and 446 of this title.

2. Bona fide purchaser

To same effect as first paragraph of original annotation, see Pridgen v. Baugh & Sons Co. (C. C. A. N. C. 1929) 30 F.(2d) 353.

3. Forged indorsement

Bank exchanging with United States for coupon bonds Victory notes bearing prior forged indorsement is liable on implied warranty of genuineness. Ladd & Tilton Bank v. U. S. (C. C. A. Or. 1929) 30 F. (2d) 334.

Failure of government, knowing of forgery of indorsement to notify holder bank in time to enable it to resort to its transferror held a defense to liability to the United States. Ladd & Tilton Bank v. U. S. (C. C. A. Or. 1929) 30 F.(2d) 334.

On a second hearing after retrial of this case, as to the points decided on the first appeal set out in the previous annotation, it was held that the government, having proved that it promptly advised indorsee bank of forgery of payee's signatures on Victory notes exchanged for coupon bonds, was entitled to recover against indorsee on implied warranty of genuineness. Ladd & Tilton Bank v. U. S. (C. C. A. Or. 1930) 43 F.(2d) 665.

4. Gifts

United States government bonds, known as Series A Bonds, and also commonly referred to as "Baby Bonds", issued pursuant to this section, as amended, cannot be made the subject of a voluntary transfer by way of gift or sale or pledge. In re Owens' Estate, 1941, 32 N.Y.S.2d 747, 177 Misc. 1006.

§ 754. Second and third Liberty loans; certificates of indebtedness and Treasury bills

(a) Authority to issue additional amount; terms and conditions; payment and redemption; acceptance for foreign obligations. In addition to the bonds and notes authorized by sections 752, 753 and 757c of this title the Secretary of the Treasury is authorized, subject to the limitation imposed by section 757b of this title, to borrow from time to time, on the credit of the United States, for the purposes of sections 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764–766, 769, 771, 773, 774 and 801 of this title, to provide for the purchase, redemption, or refunding, at or before maturity, of any outstanding bonds, notes, certificates of indebtedness or Treasury bills of the United States, and to meet public expenditures authorized by law, such sum or sums as in his judgment may be

necessary, and to issue therefor (1) certificates of indebtedness of the United States at not less than par (except as provided in section 754b of this title) and at such rate or rates of interest, payable at such time or times as he may prescribe; or, (2) Treasury bills on a discount basis and payable at maturity without interest. Treasury bills to be issued hereunder shall be offered for sale on a competitive basis, under such regulations and upon such terms and conditions as the Secretary of the Treasury may prescribe, and the decisions of the Secretary in respect of any issue shall be final. Certificates of indebtedness and Treasury bills issued hereunder shall be in such form or forms and subject to such terms and conditions, shall be payable at such time not exceeding one year from the date of issue, and may be redeemable before maturity upon such terms and conditions as the Secretary of the Treasury may prescribe. Treasury bills issued hereunder shall not be acceptable before maturity in payment of interest or of principal on account of obligations of foreign governments held by the United States of America.

(b) Exemption from taxation. All certificates of indebtedness and Treasury bills issued hereunder (after the date upon which this subdivision becomes law) shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority; and the amount of discount at which Treasury bills are originally sold by the United States shall be considered to be interest within the meaning of this subdivision.

(c) "Bonds and notes" in Federal Reserve Act as including certificates of indebtedness and Treasury bills. Wherever the words "bonds and notes of the United States," or "bonds and notes of the Government of the United States," or "bonds or notes of the United States" are used in the Federal Reserve Act,[1] they shall be held to include certificates of indebtedness and Treasury bills issued hereunder.

(d) Gain from sale of Treasury bills; exemption from taxation; loss from sale as tax deduction. Any gain from the sale or other disposition of Treasury bills issued hereunder (after the date upon which this subdivision becomes law) shall be exempt from all taxation (except estate or inheritance taxes) now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority; and no loss from the sale or other disposition of such Treasury bills shall be allowed as a deduction, or otherwise recognized, for the purposes of any tax now or hereafter imposed by the United States or any of its possessions. (As amended June 17, 1929, c. 26, 46 Stat. 19; June 17, 1930, c. 512, 46 Stat. 775; Feb. 4, 1935, c. 5, §§ 2, 3, 49 Stat. 20.)

[1] Distribution of Federal Reserve Act in the Code, see note under section 226 of Title 12, Banks and Banking.

United States obligations and evidences of ownership issued after March 27, 1942, as subject to Federal taxation, see section 742a of this title.

1. State inheritance taxes

United States Savings Bonds registered in the name of the buyer and payable to his sister upon the registrant's death were subject to La.Act No. 127, Extra Sess. of 1921, § 2 as made in "contemplation of death" where the bonds were physically within the State of Louisiana and only became the property of the sister upon the death of the registered owner. Succession of Raborn, 1946, 29 So.2d 53, 210 La. 1033.

State inheritance tax on United States Savings Bonds could not be avoided on theory that Treasury Department circulars which had effect of law and in pursuance to which the bonds were issued were part of the condition of the bonds where one of the circulars involved stipulated that the bonds should be subject to state inheritance tax. Id.

§ 754a. Issuance of obligations for purchase or refunding public indebtedness

Any obligations authorized by sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764–766, 769, 771, 773, 774, and 801 of this title may be issued for the purchase, redemption, or refunding, at or before maturity, of any outstanding bonds, notes, certificates of indebtedness, Treasury bills, or savings certificates of the United States, and any money received from the sale of such obligations or any other

money in the general fund of the Treasury may, under such rules, regulations, terms, and conditions as the Secretary of the Treasury may prescribe, be used for such purchase, redemption, or refunding. Sept. 24, 1917, c. 56, § 19, as added Jan. 30, 1934, c. 6, § 14 (a) (4), 48 Stat. 343, and amended Mar. 28, 1942, c. 205, § 4, 56 Stat. 189.

1942 Amendment. Act Mar. 28, 1942, cited to text, amended section by substituting "or savings certificates * * * fund of the Treasury may" for "or to obtain funds for such purchase, redemption, or refunding."

Cross References. All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

§ 754b. Interest; discount; price; manner of sale; receivability in payment of taxes; exchange for other obligations

(a) Any obligations authorized by sections 752, 753, and 754 of this title, may be issued on an interest-bearing basis, on a discount basis, or on a combination interest-bearing and discount basis, at such price or prices and with interest computed in such manner and payable at such time or times as the Secretary of the Treasury may prescribe; and any such obligations may be offered for sale on a competitive or other basis under such regulations and upon such terms and conditions as the Secretary of the Treasury may prescribe; and his decision with respect to any such issue shall be final.

(b) Any obligations authorized by sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764–766, 769, 771, 773, 774, and 801 of this title and redeemable upon demand of the owner or holder may, under such regulations and upon such terms and conditions as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may prescribe, be receivable by the United States in payment of any taxes imposed by the United States.

(c) Any obligations authorized by sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764–766, 769, 771, 773, 774, and 801 of this title may, under such regulations and upon such terms as the Secretary of the Treasury may prescribe, be issued in exchange for any obligations of any agency or instrumentality of the United States which are unconditionally guaranteed both as to principal and interest by the United States, at or before their maturity. Sept. 24, 1917, c. 56, § 20, as added Jan. 30, 1934, c. 6, § 14 (a) (4), 48 Stat. 343, and amended Mar. 28, 1942, c. 205, § 3, 56 Stat. 189.

1942 Amendment. Act Mar. 28, 1942, cited to text, amended section generally.

Repeals. All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Internal Revenue, referred to in this section, is an officer of the Treasury Department.

§ 755. First Liberty loan; certificates of indebtedness

Word "herein" should be stricken from the text and "in this section" should be inserted after "authorized."

Act of April 24, 1917, mentioned in text, was the First Liberty Bond Act. See Section 774 of this title.

Termination of authority to issue obligations. The authority granted in this section to issue obligations was terminated by Act Feb. 19, 1941, c. 7, § 2(b) (2), 55 Stat. 7.

§ 755a. Same; deposit of proceeds of sales of bonds and certificates of indebtedness; limit

The Secretary of the Treasury, in his discretion, is authorized to deposit in such banks and trust companies as he may designate the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness authorized by the First Liberty Bond Act (Act of April 24, 1917, chapter 4, Fortieth Statutes, page 35), or the bonds previously authorized as described in section 4 of said Act, and such deposits may bear such rate of interest and be subject to such terms and

conditions as the Secretary of the Treasury may prescribe: *Provided*, That the amount so deposited shall not in any case exceed the amount withdrawn from any such bank or trust company and invested in such bonds or certificates of indebtedness plus the amount so invested by such bank or trust company, and such deposits shall be secured in the manner required for other deposits by section 90 of Title 12. (Apr. 24, 1917, c. 4, § 7, 40 Stat. 37.)

Second proviso formerly set out in this section is now covered by section 462a-1 of Title 12, Banks and Banking.

§ 756. Loans to meet public expenditures; certificates of indebtedness; limitation; counterfeiting

Termination of authority to issue obligations. The authority granted in this section to issue obligations was terminated by Act Feb. 19, 1941, c. 7, § 2(b) (1), 55 Stat. 7.

§ 757. Second and third Liberty loans; additional loans; war-savings certificates

The section numbers in the text should read as follows: "745, 747, 752–754b, 757, 757b, 757c, 758, 760, 764–766, 769, 771, 773, 774, and 801".

Limitation of total amount of obligations issued under the act of 1917, see section 757b of this title.

Termination of authority to issue obligations. The authority granted in this section to issue obligations was terminated by Act Feb. 19, 1941, c. 7, § 2(b) (3), 55 Stat. 7.

1. Treasury regulations

Such regulations are subject of judicial notice. Brown v. White (C. C. A. Kan. 1928) 24 F.(2d) 392.

Treasury regulations relative to registration and negotiation of war savings certificates held authorized. Id.

Treasury regulations as to payment of certificates have the force of law. Warren v. U. S. (1929) 68 Ct. Cl. 634, sustaining Regulation XI as to payment on death of owner to beneficiary designated by him.

4. Offenses in general

Altering of war savings certificate with war savings certificate stamp attached, by obliterating post office and registration number with intent to defraud, constitutes offense of altering obligation of United States. Brown v. White (C. C. A. Kan. 1928) 24 F.(2d) 392.

4½. Indictment

Indictment charging alteration and possession of war savings stamps of series of 1918, by removing registration and post office numbers, where certificate altered was set forth, held not to permit discharge of prisoner in habeas corpus as absolutely void. Brown v. White (C. C. A. Kan 1928) 24 F.(2d) 392.

§ 757a. Gold certificates; issuance authorized

Section, Act Jan. 30, 1934, c. 6, § 14 (c), 48 Stat. 344, is now covered by section 405b of this title.

§ 757b. Public debt limit; limitations on obligations issued under Second Liberty Loan

The face amount of obligations issued under authority of this Act, and the face amount of obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), shall not exceed in the aggregate $275,000,000,000 outstanding at any one time. The current redemption value of any obligation issued on a discount basis which is redeemable prior to maturity at the option of the holder thereof shall be considered, for the purposes of this section, to be the face amount of such obligation. Sept. 24, 1917, c. 56, § 21, as added Feb. 4, 1935, c. 5, § 5, 49 Stat. 21, and amended May 26, 1938, c. 285, § 2, 52 Stat. 447; July 20, 1939, c. 336, 53 Stat. 1071; June 25, 1940, 11:45 a. m. E.S.T., c. 419, Title III, § 302, 54 Stat. 526; Feb. 19, 1941, c. 7, § 2(a), 55 Stat. 7, eff. Mar. 1, 1941; Mar. 28, 1942, c. 205, § 2, 56 Stat. 189; Apr. 12, 1943, c. 52, § 2, 57 Stat. 63; June 9, 1944, c. 240, § 2, 58 Stat. 272; Apr. 3, 1945, c. 51, § 2, 59 Stat. 47; June 26, 1946, c. 501, § 1, 60 Stat. 316.

Act June 26, 1946, cited to text, amended section by reducing the debt limit from $300,000,000,000 to $275,000,000,000.

Act June 9, 1944, cited to text, amended section by raising debt limit from $210,000,000,000 to $260,000,000,000.

Act April 12, 1943, cited to text, increased amount from $125,000,000,000 to $210,000,000,000.

Act Mar. 28, 1942, cited to text, amended section generally, increasing debt limitation from 65 to 125 billion dollars.

Act Feb. 19, 1941, cited to text, increased debt limitation from 49 to 65 billion dollars.

Act Apr. 3, 1945, cited to text, amended section by inserting "and the face * * * Secretary of the Treasury,", and

by raising the limit from $260,000,000,000 to $300,000,000,000.

Short title. Congress in enacting the amendment of this section by Act June 26, 1946, provided by section 2 of said Act that it should be popularly known as the "Public Debt Act of 1946".

Section 1 of Act Apr. 3, 1945, cited to text, provided: "That this Act [sections 741a, 757c(h), 757(i), 757d, and 757e of this title] may be cited as the 'Public Debt Act of 1945'."

Section 1 of Act June 9, 1944, cited to text, provided: "That this Act [this section] may be cited as the Public Debt Act of 1944."

Congressional Comment: For legislative history and purpose of Act Apr. 3, 1945, cited to text, see 1945 U.S.Code Cong.Service, p. 677. See, also, Act June 26, 1946, 1946 U.S.Code Cong.Service, p. 1224.

§ 757c. United States savings bonds and Treasury savings certificates —Authority to issue; use of proceeds

(a) The Secretary of the Treasury, with the approval of the President, is authorized to issue, from time to time, through the Postal Service or otherwise, United States savings bonds and United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by section 757b of this title, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b), (c), and (d) hereof, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe.

Issuance on discount or interest-bearing basis; terms and conditions; limitation of purchases; retention of matured bonds

(b) (1) Savings bonds and savings certificates may be issued on an interest-bearing basis, on a discount basis, or on a combination interest-bearing and discount basis and shall mature, in the case of bonds, not more than twenty years, and in the case of certificates, not more than ten years, from the date as of which issued. Such bonds and certificates may be sold at such price or prices, and redeemed before maturity upon such terms and conditions as the Secretary of the Treasury may prescribe: *Provided*, That the interest rate on, and the issue price of, savings bonds and savings certificates and the terms upon which they may be redeemed shall be such as to afford an investment yield not in excess of 3 per centum per annum, compounded semiannually. The denominations of savings bonds and of savings certificates shall be such as the Secretary of the Treasury may from time to time determine and shall be expressed in terms of their maturity values. The Secretary of the Treasury is authorized by regulation to fix the amount of savings bonds and savings certificates issued in any one year that may be held by any one person at any one time.

(2) The Secretary of the Treasury, with approval of the President, is authorized to provide by regulation that owners of series E savings bonds thereafter maturing may, at their option, retain the matured bonds and earn interest upon the maturity values thereof for not more than ten years at rates consistent with the provisions of paragraph (1) of this section.

Issuance of savings stamps; removal of limitation on denominations of postal-savings stamps

(c) The Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue, or cause to be issued, stamps, or may provide any other means to evidence payments for or on account of the savings bonds and savings certificates authorized by this section, and he may make provision for the exchange of savings certificates for savings bonds. The limitation on the authority of the Postmaster General to prescribe the denominations of postal-savings stamps contained in the second paragraph of section 756 of Title 39, is removed; and the Postmaster General is authorized, for the purposes

of such section and to encourage and facilitate the accumulation of funds for the purchase of savings bonds and savings certificates, to prepare and issue postal-savings stamps in such denominations as he may prescribe.

Exemption from taxation; circulation privilege

(d) The provisions of section 747 of this title (relating to exemptions from taxation), shall apply to savings bonds issued before March 1, 1941. For purposes of taxation any increment in value represented by the difference between the price paid and the redemption value received (whether at or before maturity) for savings bonds and savings certificates shall be considered as interest. The savings bonds and the savings certificates shall not bear the circulation privilege.

Appropriation for expenses

(e) The appropriation for expenses provided by sections 760 and 761 of this title shall be available for all necessary expenses under this section, and the Secretary of the Treasury is authorized to advance, from time to time, to the Pastmaster[1] General from such appropriation such sums as are shown to be required for the expenses of the Post Office Department and of the Postal Service, in connection with the handling of savings bonds, savings certificates, and stamps or other means provided to evidence payment therefor, which sums may be used for additional employees or any other expenditure, wherever or in whatever class of post office incurred, in connection with such handling.

Issuance of certain bonds discontinued

(f) No further original issue of bonds authorized by section 760 of Title 39, shall be made after July 1, 1935.

Postal employees as fiscal agents for issuance, etc., of bonds, certificates or stamps

(g) At the request of the Secretary of the Treasury the Postmaster General, under such regulations as he may prescribe, shall require the employees of the Post Office Department and of the Postal Service to perform, without extra compensation, such fiscal agency services as may be desirable and practicable in connection with the issue, delivery, safekeeping, redemption, or payment of the savings bonds and savings certificates, or in connection with any stamps or other means provided to evidence payments.

Redemption of savings bonds; qualifications of paying agents

(h) The Secretary of the Treasury, under such regulations as he may prescribe, may authorize or permit payments in connection with the redemption of savings bonds to be made by commercial banks, trust companies, savings banks, savings and loan associations, building and loan associations (including cooperative banks), credit unions, cash depositories, industrial banks, and similar financial institutions. No bank or other financial institution shall act as a paying agent until duly qualified as such under the regulations prescribed by the Secretary, nor unless (1) it is incorporated under Federal law or under the laws of a State, Territory, possession, the District of Columbia, or the Commonwealth of the Philippine Islands; (2) in the usual course of business it accepts, subject to withdrawal, funds for deposit or the purchase of shares; (3) it is under the supervision of the banking department or equivalent authority of the jurisdiction in which it is incorporated; and (4) it maintains a regular office for the transaction of its business.

Losses resulting from redemption of savings bonds; exemptions from liability; repayments; report to Congress

(i) Any losses resulting from payments made in connection with the redemption of savings bonds shall be replaced out of the fund established

by sections 134, 134a–134h of Title 5, and sections 528, 738a of this title under such regulations as may be prescribed by the Secretary of the Treasury. The Treasurer of the United States, any Federal Reserve bank, or any qualified paying agent authorized or permitted to make payments in connection with the redemption of such bonds, shall be relieved from liability to the United States for such losses, upon a determination by the Secretary of the Treasury that such losses resulted from no fault or negligence on the part of the Treasurer, the Federal Reserve bank, or the qualified paying agent. The Post Office Department or the Postal Service shall be relieved from such liability upon a joint determination by the Postmaster General and the Secretary of the Treasury that such losses resulted from no fault or negligence on the part of the Post Office Department or the Postal Service. The provisions of section 134b of Title 5 with respect to the finality of decisions by the Secretary of the Treasury shall apply to the determinations made pursuant to this subsection. All recoveries and repayments on account of such losses, as to which replacement shall have been made out of the fund, shall be credited to it and shall be available for the purposes thereof. The Secretary of the Treasury shall include in his annual report to the Congress a statement of all payments made from the fund pursuant to this subsection. Sept. 24, 1917, c. 56, § 22, as added Feb. 4, 1935, c. 5, § 6, 49 Stat. 21, and amended Feb. 19, 1941, c. 7, § 3, 55 Stat. 7, eff. Mar. 1, 1941; Apr. 12, 1943, c. 52, § 3, 57 Stat. 63; Apr. 3, 1945, c. 51, § 3, 59 Stat. 47; Mar. 26, 1951, c. 19, § 1, 65 Stat. 26.

1 So in original. Probably should read "Postmaster".

1951 Amendment. Subsec. (b) amended by Act Mar. 26, 1951, cited to text, which inserted "(1)" preceding first paragraph, and added paragraph (2).

1943 Amendments. Subsec. (h) added by Act Apr. 12, 1943, and amended by Act Apr. 3, 1945, both cited to text. 1945 Amendment substituted "commercial banks, trust * * * of its business" for "incorporated banks and trust companies."

Subsec (i) added by Act Apr. 12, 1943, and amended by Act Apr. 3, 1945, both cited to text. 1945 amendment substituted "qualified pay agent" for "incorporated bank of trust company" wherever appearing in the second sentence.

1941 Amendments. Subsecs. (a) and (b) were amended by Act Feb. 19, 1941, cited to text.

Subsec. (c) was added by Act Feb. 19, 1941, cited to text, which renumbered former subsec. (c) to be "(d)".

Subsecs. (d)–(g), formerly (c)–(f), respectively, were renumbered and amended by Act Feb. 19, 1941, cited to text.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

Cross References. Armed forces leave bonds, redemption under subsecs. (h) and (i) of this section, see section 35(e) of Title 37, Pay and Allowances.

Postal-savings stamps, termination of Postmaster General's authority to issue, see section 756a of Title 39, The Postal Service.

Congressional Comment and Legislative History. For legislative history and purpose of Act Apr. 3, 1945, cited to text, see 1945 U.S.Code Cong.Service, p. 677. See, also, Act Mar. 26, 1951, 1951 U.S. Code Cong.Service, p. 1372.

¼. Purpose

This section authorizing issuance of United States savings bonds manifests an intent, in the interests of a speedy and efficient prosecution of the Second World War, to authorize the Secretary of the Treasury to promulgate regulations authorizing payment or reissue of such bonds to the beneficiary designated by the registered owner thereof. In re Karlinski's Estate, 1943, 43 N.Y.S.2d 40, 180 Misc. 44.

The issuance of United States savings bonds and similar securities is designed to provide a patriotic opportunity for people of small means to invest their savings with the government, and to participate in the Second World War. In re Deyo's Estate, 1943, 42 N.Y.S.2d 379, 180 Misc. 32.

This section was enacted for the dual purpose of obtaining money for the government and to encourage thrift and savings by small investors, the nontransferability feature being designed to accomplish the second objective. Moore's Adm'r v. Marshall, 1946, 196 S.W.2d 369, 302 Ky. 729, 168 A.L.R. 241.

½. Constitutionality

To same effect as first paragraph in pocket part, see In re Hendricksen's Estate, Neb.1953, 56 N.W.2d 711.

The issuance of United States savings bonds under this section is an exercise of power of Congress to borrow money on credit of United States. U. S. v. Dauphin Deposit Trust Co., D.C.Pa.1943, 50 F.Supp. 73.

This section authorizing the Secretary of the Treasury to issue United States savings bonds subject to such terms and conditions as the Secretary of the Treasury may prescribe is a valid exercise of the constitutional power to borrow money on the credit of the United States. Franklin Washington Trust Co. v. Beltram, 1943, 29 A.2d 854, 133 N.J.Eq. 11.

Note ½

The regulation of the Secretary of the Treasury, which regulation is contained in United States war savings bonds, permitting designation of a beneficiary to receive the bond or its proceeds on death of the registered owner, is a constitutional exercise by the United States of the power to raise money to prosecute the Second World War. In re Karlinski's Estate, 1943, 43 N.Y.S.2d 40, 180 Misc. 44.

¾. Law governing

Estate created by Series "E" Government Bonds registered in co-ownership form to husband "or" wife in Michigan, was not an estate that came into existence under the laws of Michigan, but was created by federal contract and was subject to federal law. Guldager v. U. S., C.A.Mich.1953, 204 F.2d 487.

Although gifts causa mortis of securities and property are recognized as valid in many instances under proper proof under State law, the disposition of United States savings bonds must be administered under Federal law, including this section making registration of savings bonds the sole evidence of ownership, except that upon death of owner, bonds are to be considered as belonging to his estate. Id.

Regulations of the Secretary of the Treasury with respect to United States Savings Bonds governed ownership of bonds after death of the one who purchased them, and state laws dealing with gifts inter vivos or gifts causa mortis had no application. Lee v. Anderson, Ariz.1950, 218 P.2d 732.

Civil Code § 704 providing that United States savings bonds registered in the name of one person and payable on death to a named survivor, shall, upon death of registered owner, become sole and absolute property of surviving beneficiary unless federal laws provide otherwise is in accord with this section. Davies v. Beach, 1946, 168 P.2d 452, 74 Cal.App.2d 304.

United States Savings Bonds are federal contracts and their meaning and the rights of parties thereto must be determined by federal law, effect being given to all provisions which are valid under the federal law, regardless of whether such provisions, if contained in a state contract, would be valid under state law. Knight v. Wingate, 1949, 52 S.E.2d 604, 205 Ga. 133.

If Treasury Regulations pertaining to defense bonds have a reasonable relation to end sought to be attained by U.S.C.A. Const. Art. 1, § 8, cls. 2, 18 empowering Congress to borrow money on credit of the United States and authorizing Congress to make necessary laws for execution of powers vested by the Constitution in the federal government, and are fairly within powers actually delegated to Secretary of the Treasury, such regulations prevail over conflicting state law. Ervin v. Conn, 1945, 34 S.E.2d 402, 225 N. C 267.

Where Treasury Regulations were part of United States savings bonds as contracts, not only because of proper delegation of power to Secretary of the Treasury to make such regulations, but also because they were incorporated into bonds by adequate reference, as such federal contracts, bonds were governed by federal rather than state law with regard to survivorship. Id.

State laws governing descent and distribution of personal property do not supersede this section fixing status of savings bond issued by federal government. In re Briley's Estate, 1945, 21 So. 2d 595, 155 Fla. 798.

⅞. Effect of state law

No State law can vary the terms of Federal obligations or derogate from their full enforcibility. Nelson v. Wheeler, Mont.1953, 256 P.2d 1080.

Treasury regulations providing for nontransferability of government bonds, constitute a security for both the registered owner and the Federal government, and a State court has no power to waive any requirement or to rewrite the contract so made between the Federal government and the registered owner. Id.

1. Regulations for transfer

Regulations of the Secretary of Treasury imposing restrictions on the transfer of United States war savings bonds have the force and effect of federal law. Harvey v. Rackliffe, 1945, 41 A.2d 455, 141 Me. 169, 161 A.L.R. 296. See, also, In re Hendricksen's Estate, Neb.1953, 56 N.W. 2d 711; Nelson v. Wheeler, Mont.1953, 256 P.2d 1080.

A restriction on transferability of a United States savings bond is a "condition" of the bond, whereas a regulation of the Secretary of the Treasury fixing property rights in the proceeds of the bond at the time of receipt by payee is not a condition and transcends the power conferred by Congress. In re Karlinski's Estate, 1943, 43 N.Y.S.2d 40, 180 Misc. 44.

Registered owners of United States savings bonds are bound by provisions of federal laws and regulations established thereunder for ownership and transfer of such bonds. In re Reiner's Estate, Ohio Prob.1952, 106 N.E.2d 94.

Ownership of series D United States savings bonds, issued pursuant to this section, and subject to such terms as were prescribed therefor by Secretary of Treasury, is to be determined according to tenor of such bonds. In re Di Santo's Estate, 1943, 51 N.E.2d 639, 142 Ohio St. 223.

United States savings bonds, series E, constituted a contract between the registered owner and the government by terms of which the owner acquired the right to have the bonds paid only in accordance with regulations under which government issued them, and reciprocally, owner had an obligation to dispose of his claim against United States only as regulations should provide. Nelson v. Wheeler, Mont.1953, 256 P.2d 1080.

Federal treasury's regulations and this section under which certain savings bonds were issued constituted a part of the contract between the government and the registered owner, and when they provided for payment to owner's authorized representative upon his death, or for reissuance, upon his request, in names of person entitled to share in the estate, bonds were transferable only upon compliance with regulations, and not by a gift causa mortis. Id.

The federal government has power under this clause and clause 18 of this article to issue United States savings bonds and to promulgate regulations governing their ownership, transfer, and payment. Myers v. Hardin, 1945, 186 S.W.2d 925, 208 Ark. 505.

Under regulations for transfer of United States savings bonds issued by Secretary of Treasury that providing, "United States Savings Bonds are not transferable and are payable only to the owner named thereon except in the case of disability or death of owner or as the result of judicial proceedings or as otherwise specifically provided herein, but in any event only in accordance with the provisions hereof," the exception in the limitation of transfer was broad enough to admit of gift causa mortis of bonds, especially where such gift was established by judicial proceedings. Dietzen v. American Trust & Banking Co., 1939, 131 S.W.2d 69, 175 Tenn. 49.

1½. Gift inter vivos

Under this section, and regulations of treasury department, an inter vivos transfer of United States Savings Bonds, issued pursuant to this section in name of a buyer as sole owner, is prohibited. In re Nettle's Estate, Sur.1949, 91 N.Y.S.2d 255, affirmed 94 N.Y.S.2d 704, 276 App. Div. 929.

United States savings bonds authorized by this section and issued pursuant to specified Treasury Department circular and under regulations making such bonds nontransferable were not subject to gift inter vivos, so that where owner attempted such gift, his administrator, after owner's death, was entitled to recover bonds from donee. Moore's Adm'r v. Marshall, 1946, 196 S.W.2d 369, 302 Ky. 729, 168 A.L.R. 241.

The reference to gift taxes in Treasury regulation concerning United States savings bonds is intended to cover a case where purchaser of bonds has them registered in name of another and delivers them to such other, and such reference does not indicate that bonds once issued are to be made subject to a gift inter vivos. Id.

2. Gift causa mortis

Where decedent had, while confined in hospital, delivered to defendants certain government savings bonds registered in decedent's name, accompanied by statement at time of delivery that they were for defendant if decedent should not get well, decedent, as registered owner of the bonds, was the legal and equitable owner of them at all times until the instant of his death, even though there may have been an attempted gift causa mortis. Nelson v. Wheeler, Mont.1953, 256 P.2d 1080.

A transfer of postal savings certificates by gift causa mortis was not prohibited by regulation of Postmaster General which provides that postal savings certificates are not transferable nor negotiable, and that payment of certificates is to be made to holder if he is alive, and if dead to his administrator, if laws of his state of residence require appointment of administrator. Dietzen v. American Trust & Banking Co., 1939, 131 S.W.2d 69, 175 Tenn. 49.

3. Payees, rights of

Where savings bonds issued under this section were made payable to named beneficiary on death of registered owner who was Pennsylvania resident, as authorized by Treasury Regulations, Pennsylvania law regarding testamentary disposition of property was not applicable and on owner's death, the bonds were payable to beneficiary, and not to the owner's estate. U. S. v. Dauphin Deposit Trust Co., D.C.Pa.1943, 50 F.Supp. 73.

United States savings bonds which were issued to mother, payable on her death to her minor children, were payable to the minor children on the mother's death, rather than to the mother's estate. Franklin Washington Trust Co. v. Beltram, 1943, 29 A.2d 854, 133 N.J.Eq. 11.

United States savings bonds payable only to the persons named therein, in accordance with the provisions of the regulations of the Secretary of the Treasury governing registration, cannot be made the subject of a "gift". In re Deyo's Estate, 1943, 42 N.Y.S.2d 379, 180 Misc. 32.

Where a United States savings bond is issued in the name of owner and made payable at death to designated beneficiary, at owner's death the proceeds of the bond belong to beneficiary and there is no right in owner's estate to such bond or the proceeds thereof. Davies v. Beach, 1946, 168 P.2d 452, 74 Cal.App.2d 304.

Under this section and regulations issued thereunder on death of registered owner, savings bond issued under this section became property of surviving designated beneficiary and did not become a part of estate of registered owner subject to distribution under state laws for payment of claims. In re Briley's Estate, 1945, 21 So.2d 595, 155 Fla. 798.

United States government bonds, issued to testatrix payable on death to various named beneficiaries and found in testatrix' lockbox after her death, became the absolute property of beneficiary named in each immediately upon testatrix' death provided beneficiary survived testatrix, and any legacy under will to such beneficiaries was in addition to such bonds, and the bonds whose named beneficiaries predeceased testatrix reverted to estate. Myers v. Hardin, 1945, 186 S.W.2d 925, 208 Ark. 505.

4. Treasury regulations

Where this section authorized regulations by Secretary of Treasury restricting transfer, such regulations have force of law. In re Bartlett, D.C.N.Y.1947, 71 F.Supp. 514.

Regulations which are prescribed by administrative officers and are adopted pursuant to authority of act of Congress, such as Treasury Regulations, so long as they are reasonably adapted to enforcement of the act, and are not in conflict with express statutory provisions, have the force and effect of law. U. S. v. Dauphin Deposit Trust Co., D.C.Pa. 1943, 50 F.Supp. 73.

Treasury Regulations promulgated under authority given to the Secretary of Treasury by Congress by this amended section have the force and effect of federal law. Id.

Treasury regulations under which United States savings bonds were issued and reissued were within the authority given the Secretary of the Treasury by Congress and have the force of federal law. Franklin Washington Trust Co. v. Beltram, 1943, 29 A.2d 854, 133 N.J.Eq. 11. See, also, Fidelity Union Trust Co. v. Tezyk, 1947, 51 A.2d 105, 139 N.J.Eq. 316, affirmed 55 A.2d 26, 140 N.J.Eq. 474, 173 A.L.R. 546. Moore's Adm'r v. Marshall, 1946, 196 S.W.2d 369, 302 Ky. 729, 168 A.L.R. 241.

Treasury regulations providing that surviving beneficiary of United States Savings Bonds will be recognized as the sole and absolute owner of bond were not intended to prevent a legal representative from pursuing, in the interest of creditors, the proceeds of bonds fraudulently transferred to a beneficiary without consideration. In re Laundree's Estate, 1949, 91 N.Y.S.2d 482, 195 Misc. 754, reversed on other grounds 100 N.Y.S.2d 145, 277 App.Div. 994.

Where United States savings bonds adopted the regulations prescribed from time to time by Secretary of the Treasury, and circulars incorporated by reference on face of the bonds provided that bonds should be subject to such regulations, the controlling regulations as respects right of designated beneficiary to bonds after owner's death were those which were in force at owner's death. In re Karlinski's Estate, 1943, 43 N.Y.S.2d 40, 180 Misc. 44.

Where regulations of the Secretary of the Treasury governing registration of United States savings bonds were within the authority conferred upon the Secretary by Congress, the regulations have the force of federal "law," and any state law or supposed policy in conflict with them cannot prevail. In re Deyo's Estate, 1943, 42 N.Y.S.2d 379, 180 Misc. 32.

Regulations of the Secretary of the Treasury imposing restrictions on transfers of United States War Savings Bonds, and fixing the rights of holders and beneficiaries thereunder, have the effect of federal law. In re Murray's Estate, 1945, 20 N.W.2d 49, 236 Iowa 807.

Regulations of the Secretary of the Treasury determining the legal rights of the parties in regard to ownership of War Savings Bonds are not in conflict with Iowa law, and are binding irrespective of the supremacy clause, U.S.C.A. Const. Art. 6, cl. 2. Id.

Regulations of the Secretary of the Treasury that form of registration of the United States Savings Bonds will be considered as conclusive of such ownership and interest, that bonds are not transferable and are payable only to the owners named, and that they may not be sold or hypothecated, that they may be paid to registered owner during his lifetime, that after his death beneficiary, if surviving, will be recognized as sole and absolute owner, are a proper exercise of power given to the Secretary of the Treasury by Congress, and have the force and effect of federal law. Lee v. Anderson, Ariz.1950, 218 P.2d 732.

Treasury regulations relative to ownership of United States savings bonds, having the force of federal law, supercede inconsistent state laws by virtue of supremacy clause of U.S.C.A.Const. art. 6, cl. 2. Stephens v. First Nat. Bank of Nev., Nev.1948, 196 P.2d 756.

The power given to Secretary of Treasury to make regulations pertaining to issuance of United States savings bonds is a properly delegated power. Id.

Treasury regulations pertaining to form of registration of United States savings bonds, prohibiting transfer and limiting amount in bonds which may be held, do not show a "public policy" against registering bonds in name of another, so as to warrant court in refusing to enforce a resulting trust in favor of daughter by reason of her purchase of bonds in name of mother on theory that enforcement would be against public policy. Makinen v. George, 1943, 142 P.2d 910, 19 Wash.2d 340.

Regulation contained in Treasury Department circular that upon death of either co-owner of a United States Savings Bond, surviving co-owner will be recognized as sole and absolute owner of bond, has the force of a federal statute, since Secretary of Treasury was authorized by this section to make such regulations. Knight v. Wingate, 1949, 52 S.E.2d 604, 205 Ga. 133.

The power given to Secretary of the Treasury to make regulations incorporated by reference into United States savings bonds was properly delegated by Congress, which regulations have force of federal law and by virtue of U.S.C.A. Const. Art. 6, cl. 2 become the supreme law of the land. Ervin v. Conn, 1945, 34 S.E.2d 402, 225 N.C. 267.

The regulations of the Treasury Department under which United States savings bonds are issued have the force of federal law. Davies v. Beach, 1946, 168 P.2d 452, 74 Cal.App.2d 304.

The treasury regulations governing issuance and redemption of United States War Savings Bonds are within the authority given the Secretary of the Treasury by Congress and they have the force of federal law. Succession of Tanner, La.App.1946, 24 So.2d 642.

Where savings bond was issued under this section which authorized Secretary of Treasury to issue regulations, this section and the regulations made pursuant thereto were as much a part of the contract between purchaser of bond and United States as if they had been incorporated in the bond. In re Briley's Estate, 1945, 21 So.2d 595, 155 Fla. 798.

Treasury regulations governing ownership, transfer, and payment of United States government bonds, not being in excess of power vested in Secretary of the Treasury by Congress, have the same force and effect as federal law, and are controlling over any state law that may be in conflict therewith. Myers v. Hardin, 1945, 186 S.W.2d 925, 208 Ark. 505.

The powers vested in Secretary of Treasury by Congress to issue and transfer United States government bonds and to promulgate regulations governing their ownership, transfer, and payment were reasonably adapted to the execution of the legislative purpose, and hence were properly delegated to and exercised by Secretary of the Treasury. Id.

4a. —— Joint tenancy

The treasury regulation pertaining to co-ownership of United States savings bonds, with respect to co-owners creates a joint tenancy with right of survivorship. Public Debt Act of 1941, 31 U.S.C.A. § 757c. In re Myers' Estate, Pa. 1948, 60 A.2d 50.

5. Donee beneficiary

Under Pennsylvania law, United States savings bonds issued under this section and payable to named beneficiary on death of registered owner constituted a "contract" between United States and registered owner wherein beneficiary is a "donee beneficiary" whose rights arise solely from the contract and not from sale, devise or gift. U. S. v. Dauphin Deposit Trust Co., D.C.Pa.1943, 50 F.Supp. 73.

6. Bond as contract

A savings bond issued by United States under this section is a "federal contract" which is controlled by federal law. U. S. v. Dauphin Deposit Trust Co., D.C.Pa. 1943, 50 F.Supp. 73; Succession of Tanner, La.App.1946, 24 So.2d 642.

The sale and purchase of United States savings bonds constitutes a contract between federal government and purchaser thereof which contract embraces the regulations under which bonds are issued. Stephens v. First Nat. Bank of Nev., Nev.1948, 196 P.2d 756.

A United States savings bond, issued under, section 747 et seq. of this title, and the regulations of the Treasury Department, is a contract obligation of the United States to the owner and to the beneficiary severally. Davies v. Beach, 1946, 168 P.2d 452, 74 Cal.App.2d 304.

United States savings bonds, which were contracts made by purchaser in behalf of himself and of named beneficiary or with named co-owners for benefit of either or both in each case carrying with it full right of ownership to surviving beneficiary or co-owner pursuant to Treasury Regulations promulgated under power delegated to Secretary of the Treasury, were beyond reach of conflicting state law to modify or destroy. Ervin v. Conn, 1945, 34 S.E.2d 402, 225 N.C. 267.

United States War Savings Bonds registered in the names of husband or wife as co-owners constituted a contract between the United States and purchasers of such bonds, and the rights of survivor arose solely from such contract. Succession of Tanner, La.App.1946, 24 So. 2d 642.

Each United States War Savings Bond, together with the statutes, treasury regulations, and circulars, constitutes a valid binding contract determining the rights of the parties therein, and ownership and title of the bond is controlled by this section pursuant to which it was issued and applicable treasury regulations and circulars. Id.

Registry terms of savings bond issued by United States and payable on death of registered owner to designated beneficiary constitute a contract between the United States and registered owner for benefit of the beneficiary and contract was enforceable by beneficiary irrespective of state law governing distribution of estates. In re Briley's Estate, 1945, 21 So.2d 595, 155 Fla. 798.

7. Designating beneficiary

Where Series E United States War Savings Bonds were purchased in name of bankrupt payable on death to his mother, the beneficiary did not have an interest in bonds, but bankrupt was sole owner of bonds and he was properly directed to surrender bonds to bankruptcy trustee. In re Bartlett, D.C.N.Y.1947, 71 F.Supp. 514.

Treasury Department regulation, that the form of registration of United States war bonds is conclusive as to ownership and that after death of registered owner the beneficiary, if surviving, will be recognized as sole and absolute owner, is controlling as to ownership of war bonds over state law that ownership between surviving beneficiary and owner's estate depends upon to whom the money represented by the bonds actually belonged, and hence, where purchaser of war bonds died before beneficiary, administratrix of beneficiary's estate was entitled to proceeds from cashing of bonds. Harvey v. Rackliffe, 1945, 41 A.2d 455, 141 Me. 169, 161 A.L.R. 296.

United States Savings Bonds issued pursuant to this section and payable on death of buyer to registered beneficiary become absolute property of beneficiary on death of buyer. In re Nettle's Estate, Sur.1949, 91 N.Y.S.2d 255, affirmed 94 N.Y.S.2d 704, 276 App.Div. 929.

Where registered owner of outstanding United States savings bonds provided for payment thereof to the designated beneficiary directly if beneficiary survived him to date of maturity of bonds, the bonds did not constitute an invalid "will" under McKinney's N.Y.Decedent Estate Law, § 21, where under Treasury Regulations an owner might surrender such bonds for redemption but was powerless to eliminate the beneficiary during the latter's lifetime. In re Deyo's Estate, 1943, 42 N.Y.S.2d 379, 180 Misc. 32.

Where testator's United States savings bonds were registered in his name, payable on death to his sister, the form of registration of the bonds was sufficient to vest title to the proceeds of the bonds in the sister after testator's death. Id.

United States savings bonds registered in the beneficiary form are payable to the surviving beneficiary, as against contention that Treasury Regulations regarding registration of such bonds relate only to the form of payment to protect the federal government from litigation and have no relation to enjoyment of the proceeds of such bonds after collection, where such result was not contemplated by the treasury or the purchasers of bonds. Id.

Where United States Savings bonds were registered in name of deceased payable on death to his son, legal title on death passed to his son who had right to cash them. Reynolds v. Reynolds, 1950, 90 N.E.2d 338, 325 Mass. 257.

Where United States Savings bonds were registered in name of deceased payable on death to son and son was instructed in memorandum as to manner of disposition of proceeds on death of deceased, legal title to bonds passed to son on death of deceased and probate court could not direct distribution of proceeds to other persons. Id.

Where series D United States savings bonds, issued pursuant to this section, had been registered in name of one natural person payable on death to a single designated natural person, upon death of first-named natural person, bonds became property of named beneficiary and proceeds of such bonds were not subject to administration in estate of first named person. In re Di Santo's Estate, 1943, 51 N.E.2d 639, 142 Ohio St. 223.

War Savings Bonds payable to purchaser's wife, and other such bonds payable to purchaser or wife, became property of the wife upon purchaser's death under provisions of the bonds and treasury regulations incorporated therein, as against claims of purchaser's estate. In re Murray's Estate, 1945, 20 N.W.2d 49, 236 Iowa 807.

Treasury Regulations conferring absolute right of ownership on survivor of named beneficiaries of United States savings bonds were not construable as merely constituting designated persons as agents to make collection or receive payment of the bonds, where character of bonds, circumstances under which they were issued and sold, and phraseology employed with reference to final payment negatived such contention. Ervin v. Conn, 1945, 34 S.E.2d 402, 225 N.C. 267.

8. Resulting trust

Where daughter based claim to proceeds of United States savings bonds which named mother as owner and daughter as beneficiary, on theory of resulting trust by reason of daughter's purchase of bonds in mother's name with proceeds of sale of realty previously acquired from mother, in absence of evidence, stepfather's claim that deed from mother to daughter was intended to pass only naked legal title could not be sustained. Makinen v. George, 1943, 142 P.2d 910, 19 Wash.2d 340.

Where there was no evidence or claim that daughter in purchasing United States savings bonds in name of her mother did so with intent to evade any Treasury regulation or to defraud the government, or any individual the "illegal purpose rule" had no application so as to preclude daughter from claiming ownership of bonds under a resulting trust. Id.

Evidence that daughter, with proceeds from sale of realty owned by daughter, purchased United States savings bonds which named mother as owner and daughter as beneficiary, was sufficiently clear, cogent and convincing to establish that daughter owned bonds under a "resulting trust" and was entitled to proceeds thereof as against any claim of mother's estate or of stepfather. Id.

Where daughter purchased United States savings bonds with her own money but registered bonds in mother's name and with daughter named as beneficiary, fact that mother's separate property was liable for payment of expense of her last illness and funeral expenses did not indicate intent of daughter or mother to perpetrate fraud upon stepfather by such purchase of bonds so as to preclude daughter from claiming ownership of proceeds of bonds under a resulting trust. Id.

8a. Death of owner

United States Savings Bonds issued in beneficiary form, on the death of the purchaser, do not belong to the assets of his estate but belong to the surviving beneficiary. In re Laundree's Estate, 1949, 91 N.Y.S.2d 482, 195 Misc. 754, reversed on other grounds 100 N.Y.S.2d 145, 277 App. Div. 994.

Where purchaser of United States Savings Bonds had all but one of them registered in his own name with notation

that they were payable on his death to certain person, and the other bond was registered in co-ownership, regulations adopted by the Secretary of Treasury governed and, on death of the purchaser of the bonds, the one named as beneficiary or co-owner was entitled to the bonds, rather than the administrator of estate of the buyer of the bonds. Lee v. Anderson, Ariz.1950, 218 P.2d 732.

Plaintiff who, with decedent, rented safety deposit box as "joint tenants" with right of survivorship was not precluded from obtaining title to government savings bonds deposited by decedent and payable to decedent on ground of treasury regulations prohibiting transfer, etc., where plaintiff's ownership was established by judicial proceeding and plaintiff's sole ownership was not acquired by "voluntary transfer inter vivos" prohibited by the regulation but only by virtue of decedent's death. Hausfelder v. Security-First Nat. Bank of Los Angeles, 1947, 176 P.2d 84, 77 Cal. App.2d 478.

Upon death of owner of United States savings bond payable to owner, title vests in such heir, devisee or surviving joint tenant as may be determined by appropriate court. Id.

9. Death of co-owner

Where United States Series E bonds were payable to decedent or named survivor, survivor and not estate of decedent was owner of bond after death of decedent. In re Sturmer's Estate, App. Div.1950, 101 N.Y.S.2d 25.

Under this section, and regulations of treasury department, United States Savings Bonds issued under authority of the act in the names of two persons as co-owners are valid, and title vests absolutely in either co-owner on death of the other. In re Nettle's Estate, Sur.1949, 91 N.Y.S.2d 255, affirmed 94 N.Y.S.2d 704, 276 App.Div. 929.

Purchase of United States Savings Bonds in name of husband and wife as co-owners constituted a contract, and Treasury regulations providing for payment to surviving co-owner were part of the contract rather than mere method of payment for convenience of Treasury, and therefore value of such bonds was not includible in inventory of husband's estate but was the property of wife. In re Chittock's Estate, Ohio Prob.1952, 106 N.E.2d 320.

When United States savings bonds are issued under federal laws and appropriated regulations established thereunder in names of two persons in alternative as co-owners and either of such persons dies without having presented and surrendered bonds for payment or authorized re-issue, surviving owner will be recognized and considered as sole and absolute owner of bonds and payment or reissue thereof will be made to him only as though bonds were registered in his name alone. In re Reiner's Estate, Ohio Prob.1952, 106 N.E.2d 94.

United States savings bonds, registered in names of one purchasing them with his own funds or his daughter, who survived him, belong to daughter not deceased father's estate, so as to require that her motion to strike bonds from estate inventory be sustained. Id.

A judgment decreeing that daughter deliver proceeds which she had obtained from cashing United States Savings Bonds issued to mother and daughter as co-owners to executor of deceased mother's estate in accordance with daughter's assignment of her interest in bonds to mother for a valuable consideration was not contrary to any laws of the United States or regulations of United States Treasury Department. In re Hendricksen's Estate, Neb.1953, 56 N.W.2d 711.

Where decedent purchased United States savings bonds and had inscribed thereon the name of plaintiff as co-owner and placed bonds in a safety-deposit box to which plaintiff had equal access and made no attempt to deprive plaintiff of any right to bonds, other than direction to manager of bank in which safety-deposit box was located not to let any one into box, plaintiff was a co-owner of bonds, had a property interest therein, and could not be divested of her interest except in manner provided by treasury regulations. Stephens v. First Nat. Bank of Nev., Nev.1948, 196 P.2d 756.

Title to United States Savings Bonds payable to husband or wife vested in surviving wife upon death of husband, though husband retained possession of and dominion over bonds until his death, and wife was entitled to proceeds of bonds as against representative of estate of deceased husband, in absence of clear proof of some interest of husband in bonds other than as shown by the bonds. Knight v. Wingate, 1949, 52 S.E.2d 604, 205 Ga. 133.

Surviving widow became sole owner of United States War Savings Bonds purchased by husband with community funds and registered in the name of husband or wife as co-owners only upon the death of husband, and such bonds formed no part of deceased husband's estate or the community estate formerly existing between him and surviving widow and were not subject to state inheritance tax. Succession of Tanner, La.App.1946, 24 So.2d 642.

9a. Common accident

Where husband and wife were struck by automobile while crossing street, and husband died within a few minutes, and wife died about three weeks later as result of injuries sustained in the accident, and both died intestate, Gen.Code § 10503-18 respecting passing of estates where decedents die from common accident was not applicable to U. S. Government E Bonds payable to husband "or" wife, and bonds were payable to estate of wife. In re Gilger's Estate, Ohio Prob.1952, 109 N.E.2d 333.

10. Disposition by will

The statutory right, afforded by states, to dispose of property by will is not paramount to the power of the federal government to borrow money, hence a person in whose name a federal bond is registered and who has designated a registered beneficiary cannot dispose of bond by will to one other than beneficiary. Davies v. Beach, 1946, 168 P.2d 452, 74 Cal.App.2d 304.

11. Fraudulent transfer

Where United States Savings Bonds purchased by decedent were registered in his name and were payable on his death to his brother, and decedent was insolvent at the time of his death when title to bonds vested in brother, bonds were fraudulently transferred without consideration and beneficiary would be required to account for proceeds to administratrix of estate. In re Laundree's Estate, 1949, 91 N.Y.S.2d 482, 195 Misc. 754, reversed on other grounds 100 N.Y.S.2d 145, 277 App.Div. 994.

12. Creditors' rights

A creditor who has reduced his claim to judgment may through intervention of a receiver and during the lifetime of his debtor enforce the latter's right to receive payment from United States savings bonds. In re Laundree's Estate, 1949, 91 N.Y.S.2d 482, 195 Misc. 754, reversed on other grounds 100 N.Y.S.2d 145, 277 App. Div. 994.

13. Adjustment of interest
The difference between face value of each United States Savings Bond, Series G, and redemption value represented adjustment of interest to rate appropriate for shorter term, and such amount was chargeable against trust income, not against trust principal, where trustee redeemed bonds prior to maturity. In re Coulter's Estate, Sur.1953, 121 N.Y.S.2d 531.

14. Forms of issues
Series "E" Government Bonds registered in co-ownership form to a husband "or" his wife did not create an estate by the entireties under Michigan law and were subject to levy in Michigan for debts of husband. Guldager v. U. S., C. A.Mich.1953, 204 F.2d 487.

§ 757d. Proof of death to support credit allowance in Federal Reserve Bank accounts on transfer, redemption, payment, etc. of Government securities

A finding of death made by any official or agency of the United States authorized by section 1005 of Appendix to Title 50, or by any other law to make such a finding, or by the Secretary of the Army or the Secretary of the Navy, shall be a sufficient proof of death to support the allowance of credit in the accounts of any Federal Reserve bank or accountable officer of the Treasury Department in any case involving the transfer, exchange, reissue, redemption, or payment of bonds and other obligations of the United States, including those obligations guaranteed by the United States for which the Treasury Department acts as transfer agent. Sept. 24, 1917, c. 56, § 23, as added Apr. 3, 1945, c. 51, § 4, 59 Stat. 48, and amended July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, cited to text.

Congressional Comment: For legislative history and purpose of Act Apr. 3, 1945, cited to text, see 1945 U.S.Code Cong.Service, p. 677.

§ 757e. Acceptance by Treasurer of gifts and bequests of Government securities

Whenever any direct obligation of the United States, bearing interest or sold on a discount basis, is donated to the United States, is bequeathed by will to the United States, become[1] the property of the United States under the terms of a trust, or is by its terms payable upon the death of the owner to the United States or any officer thereof in his official capacity, the Treasurer of the United States upon receipt of such obligation shall effect redemption thereof. If under applicable law such gift, bequest, or other transfer to the United States is subject to a gift or inheritance tax, the Treasurer shall pay such tax out of the proceeds of redemption and shall deposit the balance in the Treasury as miscellaneous receipts or as otherwise authorized by law. If no tax is payable the entire proceeds shall be so deposited. Sept. 24, 1917, c. 56, § 24, as added Apr. 3, 1945, c. 51, § 4, 59 Stat. 48.

1 So in original. Probably should read "becomes".

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

Congressional Comment: For legislative history and purpose of Act Apr. 3, 1945, cited to text, see 1945 U.S.Code Cong.Service, p. 677.

1. Construction with other sections
This section declaring that United States Treasurer shall effect redemption of direct obligations of United States that are bequeathed to the United States, and section 304 of Title 40 authorizing Secretary of Treasury to sell lands acquired by United States by devise, do not entitle United States to take under will under Probate Code, § 27 permitting enumerated corporations to take under a will, and excluding all other corporations unless expressly authorized by statute. In re Sanborn's Estate, 1949, 204 P. 2d 335, 33 Cal.2d 647, affirmed 70 S.Ct. 503, 339 U.S. 87, 94 L.Ed. 675.

§ 759. First Liberty loan; appropriation to pay expenses

The proviso should be omitted and "May 29, 1928, c. 901, § 1(20), 45 Stat. 987" added to the citation.

"745" should be inserted before "746" and "755a" after "755".

§ 760. Second and third Liberty loans; appropriation to pay expenses of issue of bonds; report of expenditures

In text section numbers should read as follows: "745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764–766, 769, 771, 773, and 801".

"May 29, 1928, c. 901, § 1(20), 45 Stat. 987," should be added to the citation.

Unavailability of appropriation during fiscal year 1952. Section 101 of Act June 18, 1953, c. 132, Title I, § 101, 67 Stat. 67, provided in part that "the indefinite appropriation provided by section 10 of said Act, as amended [this section], shall not be available for obligation during the current fiscal year".

Similar provisions. Similar provisions were carried in prior Treasury and Post Office Appropriation Acts, Acts Apr. 24, 1945, c. 92, Title I, § 101, 59 Stat. 59; July 20, 1946, c. 588, Title I, § 101, 60 Stat. 572; July 1, 1947, c. 186, Title I, § 101, 61 Stat. 449; June 14, 1948, c. 466, Title I, § 101, 62 Stat. 410; June 30, 1949, c. 286, Title I, §§ 101, 63 Stat. 359; Sept. 6, 1950, c. 896, ch. IV, Title I, 64 Stat. 635; Aug. 11, 1951, c. 301, Title I, § 101 65 Stat. 182; June 30, 1952, c. 523, Title I, § 101, 66 Stat. 289.

Cross References. Appropriation provided by this section available for necessary expenses of United States in issuing savings bonds, see section 757c of this title.

Availability of appropriations with regard to U. S. savings bonds and Treasury savings certificates, see section 757c of this title.

§ 761. Appropriations for expense available for subsequent public debt issues

Section numbers should read: "745, 746, 747, 752, 752a, 753, 754a, 754b, 755, 755a, 757, 757b, 757c, 758–760, 764–766, 769, 771, 773, 774, 801, and 804 of this title, and section 84 of Title 12".

Appropriations for expenses during fiscal years 1944 and 1945 carried in Treasury and Post Office Appropriation Acts June 30, 1943, c. 179, Title I, § 1, 57 Stat. 255; Apr. 22, 1944, c. 175, Title I, § 1, 58 Stat. 199, respectively, were not carried in Treasury and Post Office Appropriation Act, 1946, Apr. 24, 1945, c. 92, Title I, 59 Stat. 59.

Cross References. Appropriations provided by this section available for necessary expenses of United States savings bonds, see section 757c of this title.

Limitations of this section inapplicable to certain savings bond transactions, see section 761a of this title.

Availability of appropriations with regard to U. S. savings bonds and Treasury savings certificates, see section 757c of this title.

§ 761a. Limitations of section 761 as inapplicable to certain savings bond transactions

Section, Acts Mar. 25, 1940, c. 71, Title I, 54 Stat. 59; May 31, 1941, c. 156, Title I, § 1, 55 Stat. 216; July 25, 1942, ch. 524, Title I, 56 Stat. 720, was from the Treasury and Post Office Departments Appropriation Acts, 1941, 1942, and the First Supplemental National Defense Appropriation Act, 1943, and was not repeated in subsequent appropriation acts.

§ 762. Expenses of sale and distribution of war-savings and thrift stamps

1. Treasury regulations

Treasury regulations relative to registration and negotiation of war savings certificates held authorized. Brown v. White (C. C. A. Kan. 1928) 24 F.(2d) 392.

Such regulations are subject of judicial notice. Id.

2. Offenses

Altering of war savings certificate with war savings certificate stamp attached, by obliterating post office and registration number with intent to defraud, constitutes offense of altering obligation of United States. Brown v. White (C. C. A. Kan. 1928) 24 F.(2d) 392.

3. Indictment

Indictment charging alteration and possession of war savings stamps of series of 1918, by removing registration and post office numbers, where certificate altered was set forth, held not to permit discharge of prisoner in habeas corpus as absolutely void. Brown v. White (C. C. A. Kan. 1928) 24 F.(2d) 392.

§ 764. Use of proceeds; exchange of bonds

In citation to Act Apr. 24, 1917, in credit, "§ 4" should read "§ 1".

Act April 24, 1917, mentioned in text, was the First Liberty Bond Act. See section 774 of this title.

§ 766. Bonds or certificates payable in foreign money

In the text the section numbers should read as follows: "745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c 758, 760, 764–766, 769, 771, 773, 774, and 801".

§ 767. Sinking fund for retirement of Liberty bonds and notes

There is created in the Treasury a cumulative sinking fund for the retirement of bonds and notes issued under sections 752 to 755 and 757 of this title and the First Liberty Bond Act (April 24, 1917, chapter 4, Fortieth Statutes, page 35), and outstanding on July 1, 1920, and of bonds and notes thereafter issued, under any of such sections. The

sinking fund and all additions thereto are * * *. (As amended Jan. 30, 1934, c. 6, § 14 (b), 48 Stat. 344.)

The last paragraph of this section is repealed by Act May 29, 1928, c. 901, § 1, 45 Stat. 986, 987, which provides, "That the following reports and statements now required by law to be made to Congress are hereby discontinued, and all Acts or parts of Acts herein cited as requiring the submission of such statements and reports are hereby repealed to the extent of such requirement: * * * 21. A separate annual report by the Secretary of the Treasury of the action taken under the authority contained in section 6 of the Act of March 3, 1919, creating in the Treasury a cumulative sinking fund. (Statutes at Large, volume 40, part 1, page 1311; Statutes at Large, volume 42, part 1, page 1427; title 31, section 767, United States Code.)"

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

§ 767a. Same; additional appropriation. For each fiscal year beginning with the fiscal year 1934, there is authorized to be appropriated, for the purposes of the sinking fund provided in section 767 of this title, as amended, in addition to amounts otherwise appropriated, an amount equal to 2½ per centum of the aggregate amount of the expenditures made, out of appropriations made or authorized in the Emergency Relief and Construction Act of July 21, 1932, chapter 520, Title III, 47 Statutes 716, on or after July 21, 1932 and on or before the last day of the fiscal year for which the appropriation is made. (July 21, 1932, c. 520, § 308, 47 Stat. 724.)

§ 767b. Same; further appropriation

To carry into effect the provisions of section 767a of this title, there is appropriated for each fiscal year beginning with the fiscal year 1935, out of any money in the Treasury not otherwise appropriated, for the purposes of the cumulative sinking fund provided in section 767 of this title, in addition to amounts otherwise appropriated, a sum equal to 2½ per centum of the aggregate of the expenditures on or after June 30, 1933, from appropriations made or authorized in the Emergency Relief and Construction Act of 1932, July 21, 1932, chapter 520, Title III, sections 301, 302, 47 Statutes 716, 720. (Mar. 3, 1933, c. 212, Title I, § 1, 47 Stat. 1492; Mar. 15, 1934, c. 70, Title I, § 1, 48 Stat. 428.)

§ 768. Bonds and certificates of indebtedness payable in legal tender coin or currency

"June 5, 1933, c. 48, § 1, 48 Stat. 113" should be added to credit.

Words "legal tender coin or currency" were substituted for "gold coin" in this section on authority of section 463 of this title which prohibits payment of obligations in gold.

Acts and parts of acts inconsistent with sections 315b, 408b, 441–446, 821 and 822a of this title as repealed, see section 446 of this title.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

§ 769. Certificates of indebtedness; taxation; expense of issue

United States obligations and evidences of ownership issued after March 27, 1942, as subject to Federal taxation, see section 742a of this title.

§ 771. Deposit of proceeds of sales of Liberty bonds, certificates of indebtedness, and war-savings certificates

The Secretary of the Treasury, in his discretion, is authorized to deposit, in such incorporated banks and trust companies as he may designate, the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness, Treasury bills, and war-savings certificates authorized by this section and sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760 764–766, 769, 773, 774, and 801 of this title, and arising from the payment of internal revenue taxes, and such deposits shall bear such rate or rates of interest, and shall be secured in such manner, and shall be made upon and subject to such terms and conditions as the Secretary of the Treasury may from time to time prescribe. Sept. 24, 1917, c. 56, § 8, 40 Stat. 291; Apr. 4, 1918, c.

44, § 5, 40 Stat. 504; Jan. 30, 1934, c. 6, § 14 (a), (2), 48 Stat. 343 amended Aug. 27, 1949, c. 517, § 7 (b), 63 Stat. 668.

Codification. Proviso formerly set out in this section is now covered by section 462a-1 of Title 12, Banks and Banking.

1949 Amendment. Act Aug. 27, 1949, cited to text, amended section by inserting "internal revenue taxes" in lieu of "income and excess profits taxes".

Legislative History: For legislative history and purpose of Act Aug. 27, 1949, cited to text, see 1949 U.S.Code Cong. Service, p. 1876.

§ 773. Performance of services by postal employees in connection with bonds, etc.

Section numbers in text should read as follows: "745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 774, and 801".

§ 773a. Gold clause securities; payment; exchange of coins or currencies

The lawful holders of the coins or currencies of the United States shall be entitled to exchange them, dollar for dollar, for other coins or currencies which may be lawfully acquired and are legal tender for public and private debts. The Secretary of the Treasury is authorized and directed to make such exchanges and payments upon presentation hereunder in the manner provided in regulations prescribed by him. (Aug. 27, 1935, 6:00 p. m., c. 780, § 1, 49 Stat. 938.)

Provision of this section entitling holders of gold-clause securities to receive payment of the stated dollar amounts prior to maturity expired by its own limitations on July 1, 1936.

§ 773b. Same; withdrawal of consent to sue United States; exceptions

Any consent which the United States may have given to the assertion against it of any right, privilege, or power whether by way of suit, counterclaim, set-off, recoupment, or other affirmative action or defense in its own name or in the name of any of its officers, agents, agencies, or instrumentalities in any proceeding of any nature whatsoever (1) upon any gold-clause securities of the United States or for interest thereon, or (2) upon any coin or currency of the United States, or (3) upon any claim or demand arising out of any surrender, requisition, seizure, or acquisition of any such coin or currency or of any gold or silver and involving the effect or validity of any change in the metallic content of the dollar or other regulation of the value of money, is withdrawn: *Provided*, That this section shall not apply to any suit commenced prior to August 27, 1935, or which may be commenced by January 1, 1936, or to any proceeding referred to in this section in which no claim is made for payment or credit in an amount in excess of the face or nominal value in dollars of the securities, coins or currencies of the United States involved in such proceeding. (Aug. 27, 1935, 6:00 p. m., c. 780, § 2, 49 Stat. 939.)

§ 773c. Same; manner of payment

Except in cases with respect to which consent is not withdrawn under section 773b of this title, no sums, whether heretofore or hereafter appropriated or authorized to be expended, shall be available for, or expended in, payment upon securities, coins, or currencies of the United States except on an equal and uniform dollar for dollar basis. (Aug. 27, 1935, 6:00 p. m., c. 780, § 3, 49 Stat. 939.)

§ 773d. Same; definitions of "gold clause" and "securities of the United States"

As used in 773a to 773c of this title the phrase "gold clause" means a provision contained in or made with respect to an obligation which purports to give the obligee a right to require payment in gold, or in a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, declared to be against public policy by section 463 of this title; and the phrase "securities of

the United States" means the domestic public debt obligations of the United States, including bonds, notes, certificates of indebtedness, and Treasury bills, and other obligations for the repayment of money, or for interest thereon, made, issued or guaranteed by the United States. (Aug. 27, 1935, 6:00 p. m., c. 780, § 4, 49 Stat. 939.)

§ 774. Short titles of Acts

The short titles of the following Acts referred to or included, wholly or partly, in this chapter shall be as follows: (1) The short title of the Act of April 24, 1917 (chapter 4, Fortieth Statutes, page 35), sections 745, 746, 755, 755a, 759, 764, 768, 774, 804 of this title, shall be "First Liberty Bond Act."

(2) The short title of the Act of September 24, 1917 (chapter 56, Fortieth Statutes, page 288), sections 745, 747, 752–754b, 757, 757b, 757c, 758, 760, 764–766, 769, 771, 773, 774, 801 of this title, shall be "Second Liberty Bond Act."

(3) The short title of the Act of April 4, 1918 (chapter 44, Fortieth Statutes, page 502), sections 752, 752a, 754, 765, 766, 771, 774 of this title, shall be "Third Liberty Bond Act."

(4) The short title of the Act of July 9, 1918 (chapter 142, Fortieth Statutes, page 844), sections 750, 752, 772, 774 of this title, shall be "Fourth Liberty Bond Act."

(5) The short title of the Act of September 24, 1918 (chapter 176, Fortieth Statutes, page 965), sections 757, 774 of this title, shall be "Supplement to Second Liberty Bond Act."

(6) The short title of the Act of March 3, 1919 (chapter 100, Fortieth Statutes, page 1309), sections 749, 750, 753, 754, 763, 767, 774, 802 of this title, shall be "Victory Liberty Loan Act." Apr. 24, 1917, c. 4, § 9; Sept. 24, 1917, c. 56, § 17, as added, Apr. 4, 1918, c. 44, §§ 6–8, 40 Stat. 506, and amended July 9, 1918, c. 142, § 5, 40 Stat. 845; Sept. 24, 1918, c. 176, § 7, 40 Stat. 967; Mar. 3, 1919, c. 100, § 11, 40 Stat. 1314.

OBLIGATIONS OF FOREIGN GOVERNMENT

§ 801. Conversion into obligations bearing higher interest rate; sale of obligations; redemption of United States bonds

"Except as otherwise provided in sections 805 to 809 of this title" should be deleted from the text.

Words "sections 745, 746, 747, 752–755a, 757, 758, 759, 760, 764–766, 768, 769, 771, 773, 774, 801, and 804 of this title" should be substituted for "the First or second Liberty Bond Acts (April 24, 1917, Chapter 4, Fortieth Statutes, page 35; September 24, 1917, chapter 56, Fortieth Statutes, page 288)". Wherever else in the text the word "Act" appears the word "sections" should be substituted.

§ 802. Conversion of short-time into long-time obligations; interest; obligations of foreign governments payment of obligations

Words "Except as otherwise provided for in sections 805 to 809 of this title" have been stricken from the text.

"(Apr. 24, 1917, c. 4, 40 Stat. 35)" should be inserted after "First Liberty Bond Act".

§ 803. Maturity of obligations of foreign governments

The obligations of foreign governments acquired by the Secretary of the Treasury by virtue of the provisions of sections 745, 746, 747, 752–755a, 757–760, 764–766, 768, 769, 771, 773, 774, 801, and 804 of this title, shall mature at such dates as shall be determined by the Secretary of the Treasury: *Provided*, That such obligations acquired by virtue of the provisions of sections 745, 746, 755, 759, 764, 768, 774, and 804 of this title, or through the conversion of short-time obligations acquired under such sections, shall mature not later than June 15, 1947, and all other such obligations of foreign governments shall mature not later than October 15, 1938. Mar. 3, 1919, c. 100, § 8, 40 Stat. 1313.

§ 804. Payment before maturity or sale of obligations of foreign governments

Words "Except as otherwise provided in sections 805 to 809 of this title" have been stricken from the text.

§ 804a. Repealed. June 25, 1948, c. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, Apr. 13, 1935, c. 112, §§ 1, 2, 48 Stat. 574, relating to financial transactions with foreign governments in default to United States, is covered by section 955 of new Title 18, Crimes and Criminal Procedure.

½. Construction

This act, being a penal statute and being in derogation of ordinary principles of private rights, must be strictly construed. Soviet American Securities Corporation v. Bolger (D.C.N.J.1936) 16 F. Supp. 622.

This section, being penal, should not be unduly extended by construction. 1934, 38 Op.Atty.Gen. 580.

1. Token payments

This section excludes as a "default" such partial failure theretofore occurring as resulted from making and acceptance of so-called "token payments", and if a Government which made such a payment should pay full amount of next installment due on its indebtedness to United States, it would not be "in default", within meaning of term as used in this section. 1934, 38 Op.Atty. Gen. 580.

Great Britain, Czechoslovakia, Italy, Latvia, and Lithuania, countries which have made so-called token payments, are not, at the present time, in default under the terms of this section; and it is also held that Canada is not in default. (1934) 37 Op.Atty.Gen. 505.

2. Commercial transactions

This section applies to bonds and securities, and to other obligations of like nature, but does not apply to foreign currency, postal money orders, drafts, checks, and other ordinary aids to banking and commercial transactions. Id.

This section does not apply to acceptances or time drafts given in ordinary commercial transactions, but such transactions must be conducted in good faith, in order to be within the law, and not as mere subterfuges to circumvent its purposes. Id

The acceptance by American bondholders of scrip or funding bonds issued by the German Government or the Conversion Office for German Foreign Debts in liquidation of interest coupons on bonds of German States, municipalities, and corporations is not forbidden by this section. (1934) 37 Op.Atty.Gen. 526.

3. Renewal or adjustment

Under this section "scrip" or "funding bonds" are authorized if issued in the bona fide "renewal or adjustment of existing indebtedness." (1934) 37 Op. Atty.Gen. 505.

Bonds, securities, or other obligations issued for the purpose of renewing or adjusting existing indebtedness are excepted from the prohibitions of this section, but it will be a question of fact in each case whether or not what is done amounts in good faith to the mere "renewal * * * of existing indebtedness." Id.

4. Default nations

The Soviet Government, which has not yet recognized as binding upon it the obligations incurred by prior governments of Russia, is regarded as in default, within the contemplation of this section, and that Government remains in default to the Government of the United States, notwithstanding the pendency of negotiations "with a view to arriving at the amount of the indebtedness due" from the Soviet Government to the Government of the United States. (1934) 37 Op.Atty.Gen. 505.

5. Time of issuance

This act is inapplicable to Russian bonds where, under Russian law, title to bonds had passed from Russian government to purchaser prior to date when act became effective, since bonds were "issued" at time title passed. Soviet American Securities Corporation v. Bolger (D.C.N.J.1936) 16 F.Supp. 622.

6. Nicaragua

Proposed treaty with Nicaragua providing for cancellation of its indebtedness to the United States in part satisfaction of its claim against the United States and for payment of the balance will, upon ratification, remove that Government from the operation of this section. 1938, 39 Op.Atty.Gen. 151.

7. Foreign incorporation

Any so-called branches which are actually incorporated in foreign countries are not subject to the provisions of this section or section 245j et seq. of Title 22, concerning financial transactions with foreign governments. 1939, 39 Op.Atty. Gen. 328.

No reason is perceived for challenging the practice heretofore followed in accordance with the view evidenced when this section was passed that it would not apply to customary transactions by foreign branches of American banks. Id

§ 804b. Repealed. June 25, 1948, c. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, Apr. 13, 1934, c. 112, § 3, as added July 31, 1945, c. 339, § 9, 59 Stat. 516, relating to exemption of members of International Monetary Fund and the Bank for Reconstruction and Rehabilitation, is covered by section 955 of new Title 18, Crimes and Criminal Procedure.

§§ 805–809. [Executed.]

CHAPTER 13.—CREDIT AND CURRENCY EXPANSION [New]

Sec.
821. Purchase of Treasury bills and other obligations of the United States; issuance of United States notes to repay money borrowed and purchase Government bonds; retirement of notes; legal tender; regulation of value of gold and silver coins.
822. Rules and regulations.
822a. Stabilization of exchange value of dollar; stabilization fund; payment of subscription to International Monetary Fund; repayment covered into Treasury.
822b. Rules and regulations.
823. Acceptance of silver in payment of foreign debts; issuance of silver certificates; coinage of silver for redemption of certificates; redemption and reissuance of certificates; rules and regulations.
824. Ratification of Acts of President and Secretary of Treasury.

§ 821. Purchase of Treasury bills and other obligations of United States; issuance of United States notes to repay money borrowed and purchase government bonds; legal tender; retirement of notes; regulation of value of gold and silver coins

Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion—

(a) To direct the Secretary of the Treasury to enter into agreements with the several Federal Reserve banks and with the Board of Governors of the Federal Reserve System whereby the Board of Governors of the Federal Reserve System will, and it is hereby authorized to, notwithstanding any provisions of law or rules and regulations to the contrary, permit such reserve banks to agree that they will, (1) conduct, pursuant to existing law, throughout specified periods, open market operations in obligations of the United States Government or corporations in which the United States is the majority stockholder, and (2) purchase directly and hold in portfolio for an agreed period or periods of time Treasury bills or other obligations of the United States Government in an aggregate sum of $3,000,000,000 in addition to those they may then hold, unless prior to the termination of such period or periods the Secretary shall consent to their sale. No suspension of reserve requirements of the Federal Reserve banks, under the terms of section 248(c) of Title 12, necessitated by reason of operations under this section, shall require the imposition of the graduated tax upon any deficiency in reserves as provided in said section 248(c). Nor shall it require any automatic increase in the rates of interest or discount charged by any Federal Reserve bank, as otherwise specified in that section. The Board of Governors of the Federal Reserve System, with the approval of the Secretary of the Treasury, may require the Federal Reserve banks to take such action as may be necessary, in the judgment of the Board of Governors and of the Secretary of the Treasury, to prevent undue credit expansion.

(b) If the Secretary, when directed by the President, is unable to secure the assent of the several Federal Reserve banks and the Board of Governors of the Federal Reserve System to the agreements authorized in this section, or if operations under the above provisions prove to be inadequate to meet the purposes of this section, or if for any other reason additional measures are required in the judgment of the President to meet such purposes, then the President is authorized—

(1) Repealed. June 12, 1945, c. 186, § 4, 59 Stat. 238.

(2) Expired.

The President, in addition to the authority to provide for the unlimited coinage of silver at the ratio so fixed, under such terms and conditions as he may prescribe, is further authorized to cause to be issued and delivered to the tenderer of silver for coinage, silver certificates in lieu of the standard silver dollars to which the tenderer would be entitled and in an amount in dollars equal to the number of coined standard silver dollars that the tenderer of such silver for coinage would receive in standard silver dollars.

The President is further authorized to issue silver certificates in such denominations as he may prescribe against any silver bullion, silver, or standard silver dollars in the Treasury not then held for redemption of any outstanding silver certificates, and to coin standard silver dollars or subsidiary currency for the redemption of such silver certificates.

The President is authorized, in his discretion, to prescribe different terms and conditions and to make different charges, or to collect different seigniorage, for the coinage of silver of foreign production than for the coinage of silver produced in the United States or its dependencies. The silver certificates herein referred to shall be issued, delivered, and circulated substantially in conformity with the law now governing existing silver certificates, except as may herein be expressly provided to the contrary, and shall have and possess all of the privileges and the legal tender characteristics of existing silver certificates now in the Treasury of the United States, or in circulation.

The President is authorized, in addition to other powers, to reduce the weight of the standard silver dollar in the same percentage that he reduces the weight of the gold dollar.

The President is further authorized to reduce and fix the weight of subsidiary coins so as to maintain the parity of such coins with the standard silver dollar and with the gold dollar. (May 12, 1933, c. 25, Title III, § 43, 48 Stat. 51, as amended June 5, 1933, c. 48, § 2, 48 Stat. 113; Jan. 30, 1934, c. 6, § 12, 48 Stat. 342; Aug. 23, 1935, c. 614, § 203(a), 49 Stat. 704; Jan. 23, 1937, 2 p. m., c. 5, § 2, 50 Stat. 4; July 6, 1939, c. 260, § 3, 53 Stat. 998; June 30, 1941, c. 265, § 2, 55 Stat. 396; June 12, 1945, c. 186, § 4, 59 Stat. 23§.)

Act June 12, 1945, cited to text, repealed subsec. (b) (1).

Subsec. (b)(2), last sentence amended by Act July 6, 1939, § 3, cited to text, by extending expiration date from June 30, 1939 to June 30, 1941.

Act Aug. 23, 1935, c. 614, § 203 (a), 49 Stat. 704, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

Act Jan. 23, 1937, cited to the text, affected subsection (b) (2).

Proc. No. 2153, Jan. 10, 1936, 49 Stat. 3481, extending the powers conferred by this section for one additional year from January 30, 1936.

Repeals. All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

Regulation of value of gold and silver coins. The first par. of subsec. (b) (2) which authorized the President to fix by proclamation the weight of gold and silver dollars, expired by its own volition on June 30, 1943, and has been omitted from this section.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Increase or decrease of reserve balances of Federal Reserve Banks to meet credit expansion, see § 462b of Title 12.

Provisions relating to legal tender are set out as section 462 of this title.

Ratification of acts of President and Secretary of the Treasury under this section, see section 213 of Title 12, Banks and Banking.

[Coinage of Silver]

Proc. No. 2067, Dec. 21, 1933, 48 Stat. 1723.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas, by paragraph (2) of section 43, title III, of the Act of Congress, approved May 12, 1933 (Public, No. 10), the President is authorized "By proclamation to fix the weight of the gold dollar in grains nine tenths fine and also to fix the weight of the silver dollar in grains nine tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies, and to provide for the unlimited coinage of such gold and silver at the ratio so fixed, * * *"; and

Whereas, from investigations made by me, I find it necessary, in aid of the stabilization of domestic prices and in accordance with the policy and program authorized by Congress, which are now being administered, and to protect our foreign commerce against the adverse effect of depreciated foreign currencies, that the price of silver be enhanced and stabilized; and

Whereas, a resolution presented by the delegation of the United States of America was unanimously adopted at the World Economic and Monetary Conference in London on July 20, 1933, by the representatives of 66 Governments, which in substance provided that said Governments will abandon the policy and practice of

melting up or debasing silver coins; that low-valued silver currency be replaced with silver coins and that no legislation should be enacted that will depreciate the value of silver; and

Whereas, a separate and supplemental agreement was entered into, at the instance of the representatives of the United States, between China, India, and Spain, the holders and users of large quantities of silver, on the one hand, and Australia, Canada, Mexico, Peru, and the United States on the other hand, as the chief producers of silver, wherein China agreed not to dispose of any silver derived from the melting up or debasement of silver coins, and India agreed not to dispose of over 35,000,000 ounces of silver per annum during a period of 4 years commencing January 1, 1934, and Spain agreed not to dispose of over 5,000,000 ounces of silver annually during said period, and both of said Governments agreed that at the end of said period of 4 years they would then subject themselves to the general resolution adopted at the London Conference, and in consideration of such limitation it was agreed that the Governments of the five producing countries would each absorb from the mines in their respective countries a certain amount of silver, the total amount to be absorbed by said producing countries being 35,000,000 ounces per annum during the 4 years commencing the 1st day of January 1934; that such silver so absorbed would be retained in each of said respective countries for said period of 4 years, to be used for coinage purposes or as reserves for currency, or to otherwise be retained and kept off the world market during such period of time, it being understood that of the 35,000,000 ounces the United States was to absorb annually at least 24,421,410 ounces of the silver produced in the United States during such period of time.

Now, therefore, finding it proper to cooperate with other Governments and necessary to assist in increasing and stabilizing domestic prices, to augment the purchasing power of peoples in silver-using countries, to protect our foreign commerce against the adverse effect of depreciated foreign currencies, and to carry out the understanding between the 66 Governments that adopted the resolution hereinbefore referred to; by virtue of the power in me vested by the act of Congress above cited, the other legislation designated for national recovery, and by virtue of all other authority in me vested;

I, Franklin D. Roosevelt, President of the United States of America, do proclaim and direct that each United States coinage mint shall receive for coinage into standard silver dollars any silver which such mint, subject to regulations prescribed hereunder by the Secretary of the Treasury, is satisfied has been mined, subsequently to the date of this proclamation, from natural deposits in the United States or any place subject to the jurisdiction thereof. The Director of the Mint, with the voluntary consent of the owner, shall deduct and retain of such silver so received 50 percent as seigniorage and for services performed by the Government of the United States relative to the coinage and delivery of silver dollars. The balance of such silver so received, that is, 50 percent thereof, shall be coined into standard silver dollars and the same, or an equal number of other standard silver dollars, shall be delivered to the owner or depositor of such silver. The 50 percent of such silver so deducted shall be retained as bullion by the Treasury and shall not be disposed of prior to the thirty-first day of December 1937, except for coining into United States coins.

The Secretary of the Treasury is authorized to prescribe regulations to carry out the purposes of this proclamation. Such regulations shall contain provisions substantially similar to the provisions contained in the regulations made pursuant to the act of Congress, approved April 23, 1918 (40 Stat. L., p. 535), known as the Pittman Act, with such changes as he shall determine prescribing how silver mined, subsequently to the date of this proclamation from natural deposits in the United States or any place subject to the jurisdiction thereof, shall be identified.

This proclamation shall remain in force and effect until the 31st day of December 1937, unless repealed or modified by act of Congress or by subsequent proclamation.

The present ratio in weight and fineness of the silver dollar to the gold dollar shall, for the purposes of this proclamation, be maintained until changed by further order or proclamation.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this proclamation as the interest of the United States may seem to require.

In Witness Whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-first day of December, in the year of our Lord nineteen hundred and thirty-three, and of
[Seal] the Independence of the United States of America the one hundred and fifty-eighth.

Franklin D. Roosevelt.

By the President:
William Phillips,
Acting Secretary of State.

[Weight of Gold Dollar Reduced]

Proc. No. 2072, Jan. 31, 1934, 48 Stat. 1732.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas, by virtue of section 1 of the act of Congress approved March 14, 1900 (31 Stat. L. 45), the present weight of the gold dollar is fixed at 25.8 grains of gold nine tenths fine; and

Whereas, by section 43, title III of the act approved May 12, 1933 (Public, No. 10, 73d Cong.), as amended by section 12 of the Gold Reserve Act of 1934, it is provided in part as follows:

"Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion—

"(a) To direct the Secretary of the Treasury to enter into agreements with the several Federal Reserve banks and with the Federal Reserve Board whereby the Federal Reserve Board will, and it is hereby authorized to, notwithstanding any provisions of law or rules and regulations to the contrary, permit such reserve banks to agree that they will, (1) conduct, pursuant to existing law, throughout specified periods, open market operations in obligations of the United States Government or corporations in

which the United States is the majority stockholder, and (2) purchase directly and hold in portfolio for an agreed period or periods of time Treasury bills or other obligations of the United States Government in an aggregate sum of $3,000,000,000 in addition to those they may then hold, unless prior to the termination of such period or periods the Secretary shall consent to their sale. No suspension of reserve requirements of the Federal Reserve banks, under the terms of section 11 (c) of the Federal Reserve Act, necessitated by reason of operations under this section, shall require the imposition of the graduated tax upon any deficiency in reserves as provided in said section 11 (c). Nor shall it require any automatic increase in the rates of interest or discount charged by any Federal Reserve bank, as otherwise specified in that section. The Federal Reserve Board, with the approval of the Secretary of the Treasury, may require the Federal Reserve banks to take such action as may be necessary, in the judgment of the Board and of the Secretary of the Treasury, to prevent undue credit expansion.

"(b) If the Secretary, when directed by the President, is unable to secure the assent of the several Federal Reserve banks and the Federal Reserve Board to the agreements authorized in this section, or if operations under the above provisions prove to be inadequate to meet the purposes of this section, or if for any other reason additional measures are required in the judgment of the President to meet such purposes, then the President is authorized—

* * * * * * *

"(2) By proclamation to fix the weight of the gold dollar in grains nine tenths fine and also to fix the weight of the silver dollar in grains nine tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies, and to provide for the unlimited coinage of such gold and silver at the ratio so fixed, or in case the Government of the United States enters into an agreement with any government or governments under the terms of which the ratio between the value of gold and other currency issued by the United States and by any such government or governments is established, the President may fix the weight of the gold dollar in accordance with the ratio so agreed upon, and such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity, but in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum. Nor shall the weight of the gold dollar be fixed in any event at more than 60 per centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require; except that such powers shall expire two years after the date of enactment of the Gold Reserve Act of 1934 unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency"; and

Whereas, I find, upon investigation, that the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currencies of other governments in relation to the present standard value of gold, and that an economic emergency requires an expansion of credit; and

Whereas, in my judgment, measures additional to those provided by subsection (a) of said section 43 are required to meet the purposes of such section; and

Whereas, I find, from my investigation, that, in order to stabilize domestic prices and to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at $15\frac{5}{21}$ grains nine tenths fine,

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States, by virtue of the authority vested in me by section 43, title III of said act of May 12, 1933, as amended, and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare, and fix the weight of the gold dollar to be $15\frac{5}{21}$ grains nine tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

This proclamation shall remain in force and effect until and unless repealed or modified by act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proclamation as the interest of the United States may seem to require.

In witness whereof I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done in the City of Washington at 3:10 o'clock in the afternoon, eastern standard time, this 31st day of January, in the year of our Lord one thousand nine hundred and

[Seal] thirty-four, and of the Independence of the United States the one hundred and fifty-eighth.

Franklin D. Roosevelt.

By the President:
Cordell Hull,
Secretary of State.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION [2124]

I, Franklin D. Roosevelt, President of the United States of America, do proclaim and direct that, with respect to all silver received by a United States coinage mint under the provisions of the Proclamation of the twenty-first day of December, 1933 which such mint, subject to regulations prescribed hereunder by the Secretary of the Treasury, is satisfied has been mined on or after April 10, 1935, from natural deposits in the United States or any place subject to the jurisdiction thereof, the deduction for seigniorage and services performed by the Government shall be 45 per cent and there shall be returned therefor in standard silver dollars, silver certificates, or any other coin or currency of the United States the monetary value of the silver so received (that is, $1.2929+ a fine ounce), less such deduction of 45 per cent.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this proclamation as the interest of the United States may seem to require.

In witness whereof I have hereunto set my hand and caused the seal of the Unit-

ed States to be affixed. (Promulgated, Proc. No. 2124, April 10, 1935, 49 Stat. 3445.)

[Coinage of Silver]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION [2092]

[Revoked in Part]

I, Franklin D. Roosevelt, President of the United States of America, do proclaim and direct that each United States mint shall receive for coinage or for addition to the monetary stocks of the United States, as hereinafter determined, any silver which such mint, subject to regulations prescribed hereunder by the Secretary of the Treasury, is statisfied was situated on the effective date hereof in the continental United States, including the Territory of Alaska.

The silver so delivered shall be added to the monetary stocks of the United States and shall be coined from time to time into standard silver dollars in such amounts as are required to carry out the provisions of this proclamation and to provide for the redemption of silver certificates; and there shall be returned therefor in standard silver dollars, silver certificates, or any other coin or currency of the United States, the monetary value of the silver so delivered (that is, $1.-2929+ a fine troy ounce), less a deduction of 61½25 percent thereof for seigniorage, brassage, coinage, and other mint charges, such deduction having been determined by the Secretary of the Treasury with my approval.

The provisions hereof are supplemental to the provisions of the proclamation of the 21st day of December 1933, and the United States coinage mints shall continue to receive for coinage in accordance with the provisions of such proclamation silver which such mint, subject to regulations prescribed thereunder by the Secretary of the Treasury, is satisfied has been mined subsequently to the date of such proclamation, from natural deposits in the United States or any place subject to the jurisdiction thereof: Provided, however, That the Director of the Mint shall, at the option of the tenderer of such silver, deliver silver certificates in lieu of the standard silver dollars to which the tenderer of such silver for coinage would be entitled and in an amount in dollars equal to the coined standard silver dollars that the tenderer of such silver for coinage would receive in standard silver dollars.

The Secretary of the Treasury is authorized to prescribe regulations to carry out the purposes of this proclamation.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this proclamation as the interest of the United States may seem to require.

August 9, 1934.

Proc. No. 2282, April 28, 1938, 3 Fed. Reg. 997, 52 Stat. 1543, revoked Proc.No. 2092 of August 9, 1934, "except as to the provisions thereof relating to settlement for silver received by the United States coinage mints pursuant to Proc.No.2067 of December 21, 1933, 48 Stat. 1723, which provisions shall not be affected by this proclamation."

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION [2125]

Proc. No. 2125, April 24, 1935, 49 Stat. 3445.

I, Franklin D. Roosevelt, President of the United States of America, do proclaim and direct that, with respect to all silver received by a United States coinage mint under the provisions of the Proclamation of the twenty-first day of December, 1933, which such mint, subject to regulations prescribed hereunder by the Secretary of the Treasury, is satisfied has been mined on or after April 24, 1935, from natural deposits in the United States or any place subject to the jurisdiction thereof, the deduction for seigniorage and services performed by the Government shall be 40 per cent and there shall be returned therefor in standard silver dollars, silver certificates, or any other coin or currency of the United States, the monetary value of the silver so received (that is, $1.2929+ a fine ounce), less such deduction of 40 per cent.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this proclamation as the interest of the United States may seem to require.

Proc. No. 2153, Jan. 10, 1936, 49 Stat. 3489, extended the powers conferred by this section for one additional year from January 30, 1936.

[Coinage of Silver]

Proc. No. 2268, Dec. 30, 1937, 52 Stat. 1530.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas, by Proclamation of the twenty-first day of December, 1933, as modified by Proclamations of the ninth day of August, 1934, and the tenth and twenty-fourth days of April, 1935, the United States coinage mints are directed to receive for coinage and addition to the monetary stocks of the United States silver mined subsequent to December 21, 1933, from natural deposits in the United States or any place subject to the jurisdiction thereof; and

Whereas, such Proclamation as so modified states in part that:

"This proclamation shall remain in force and effect until the thirty-first day of December, 1937, unless repealed or modified by Act of Congress or by subsequent proclamation." and that

"Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this proclamation as the interest of the United States may seem to require."

Now, therefore, finding that the interests of the United States require further modification of said Proclamation of the twenty-first day of December, 1933, as so modified; by virtue of the power in me vested by the Act of Congress cited in said Proclamation, and other legislation designated for national recovery, and by virtue of all other authority in me vested;

I, Franklin D. Roosevelt, President of the United States of America, do hereby further modify the said Proclamation of the twenty-first day of December, 1933, so that the same shall remain in force and effect until the 31st day of December, 1938, and so that the amount of deduction for seigniorage, brassage, coinage and other mint charges from the monetary value of silver delivered thereunder which has been mined on or after January 1, 1938, shall be 50% of such monetary value; and I do proclaim and direct that, with respect to all silver received by a United States coinage mint under the provisions of the said Proclamation of the twenty-first day of December, 1933, which such mint, subject to regulations prescribed hereunder by the Secretary of the Treasury; is satisfied has been mined on or after Janu-

ary 1, 1938, from natural deposits in the United States or any place subject to the jurisdiction thereof, the deduction for seigniorage and services performed by the Government shall be 50% and there shall be returned therefor, in standard silver dollars, silver certificates, or any other coin or currency of the United States, the monetary value of the silver so received (that is, $1.2929+, per fine ounce), less such deduction of 50%, and that the said Proclamation of the twenty-first day of December, 1933, as heretofore and hereby modified shall remain in force and effect until the 31st day of December, 1938, unless repealed or further modified by Act of Congress or by subsequent Proclamation.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this Proclamation as the interests of the United States may seem to require.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 30th day of December, in the year of our Lord nineteen hundred and
[Seal] thirty-seven, and of the Independence of the United States of America the one hundred and sixty-second.

Franklin D Roosevelt

By the President:
Cordell Hull
Secretary of State.

[Coinage of Silver]

Proc. No. 2317, Dec. 31, 1938, 4 Fed. Reg. 1, 53 Stat. 2517.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

* * * * * * * *

I, Franklin D. Roosevelt, President of the United States of America, do hereby further modify the said Proclamation of the twenty-first day of December, 1933, so that the same shall remain in force and effect until the 30th day of June, 1939; and I do proclaim and direct that, unless repealed or further modified by Act of Congress or by subsequent Proclamation, the said Proclamation of the twenty-first day of December, 1933, as heretofore and hereby modified shall remain in force and effect until the 30th day of June, 1939:

[Proviso requiring delivery to a United States coinage mint not later than June 30, 1939 was rescinded by Proclamation No. 2342. 4 F.R. 143 DI.]

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this Proclamation as the interests of the United States may seem to require.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 31st day of December, in the year of our Lord nineteen hundred and thirty-eight, and of the Independence of the [Seal.] United States of America the one hundred and sixty-third.

Franklin D. Roosevelt

By the President:
Sumner Welles
Acting Secretary of State.

4 Fed.Reg. 1

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Proc. No. 2342, July 25, 1939, 4 Fed. Reg. 143, 53 Stat. 2547.

* * * * *

I, Franklin D. Roosevelt, President of the United States of America, do hereby proclaim and direct that, unless repealed or further modified by Act of Congress or by subsequent Proclamation, the said Proclamation of the twenty-first day of December, 1933, as heretofore and hereby modified, shall remain in force and effect until the thirty-first day of December, 1939, with respect to silver mined subsequently to December 21, 1933, and on or before July 1, 1939, from natural deposits in the United States or any place subject to the jurisdiction thereof; and I do further proclaim and direct that the proviso:

"that silver to be eligible for receipt under the said Proclamation of the twenty-first day of December, 1933, as heretofore and hereby modified must be delivered to a United States coinage mint not later than June 30, 1939."

stated in the said Proclamation of the thirty-first day of December, 1938, is hereby rescinded.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this Proclamation as the interests of the United States may seem to require.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 25th day of July, in the year of our Lord nineteen hundred and
[Seal] thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

Franklin D. Roosevelt

By the President:
Cordell Hull
Secretary of State.

½. Constitutionality

Congress may alter the weight and fineness of the gold dollar. Bakewell v. U. S., D.C.Mo.1939, 28 F.Supp. 504. affirmed 110 F.2d 564, certiorari denied 60 S.Ct. 1081, 310 U.S. 638, 84 L.Ed. 1407.

Congress may confer on the President authority to fix the weight of the gold dollar. Id.

1. Indentures payable in gold

Joint Resolution providing for discharge of gold clause obligations in legal tender held applicable to indentures which became contracts for payment of money measured in gold after Act of Congress and proclamations of President and Secretary of Treasury excluded gold for monetary use, as against contention that such indentures were so uncommon as not to interfere with Congress' power to regulate currency. Holyoke Water Power Co. v. American Writing Paper Co., C.C.A.Mass.1936, 83 F.2d 398.

Under Joint Resolution providing for discharge of gold clause obligations in legal tender, rentals payable in quantity of gold equal in amount to named amount of gold coin of certain standard of weight and fineness, or its equivalent in currency, were dischargeable dollar for dollar in any currency which was legal tender when rentals became due, where Act of Congress and proclamations of President and Secretary of Treasury excluding gold for monetary use had made indentures contracts for payment of money measured in gold. Id.

The acts of Congress and the President in fixing gold content of dollar and providing for maintenance thereof at parity with standard fixed are equally operative on creditors and debtors and require debtors to discharge their obligations theretofore or thereafter incurred, dollar for dollar, in the coin or currency which, at time of payment, should be legal tender for public and private debts. Nye v. Schwab, 1938, 16 N.E.2d 783, 58 Ohio App. 422.

2. Liberty Loan gold bonds

Presidential proclamation No. 2067 and legislation reducing gold content of dollar, prohibiting possession of gold coin or payment in gold coin by United States, deprived Secretary of Treasury of power to pay gold on Liberty Loan gold bonds, or to pay in paper money value of gold which they promised. Machen v. U. S. (C.C.A.1937) 87 F.(2d) 594, reversed on other grounds 58 S.Ct. 248, 302 U.S. 392, 82 L.Ed. 294, 114 A.L.R. 807.

Fact that if gold coin were paid holder of Liberty Loan gold bond in accord with its terms, holder would be required to surrender gold and accept legal tender currency in lieu thereof, did not authorize payment of bonds in devalued currency, on theory that that would constitute substantial compliance with provision thereof requiring redemption in gold coin at 1917 standard of value. Id.

Executor of deceased alien was not entitled to recover the difference between the value in gold coin of U. S. Liberty Loan Gold Bonds and amount received therefor in devalued currency on June 15, 1935, when the bonds were called and surrendered for redemption. Hartmann v. U. S., 1946, 65 F.Supp. 397, 106 Ct.Cl. 686, certiorari denied 67 S.Ct. 1080, 330 U.S. 842, 91 L.Ed. 1288.

3. Silver certificates

The President is empowered by subsection (b) (2), to authorize and direct the Secretary of the Treasury to issue and deliver silver certificates in lieu of silver dollars deliverable under Proclamation No. 2067 of December 21, 1933, and the Secretary may exact seigniorage for the issuance and delivery of such silver certificates. 1934, 38 Op.Atty.Gen. 89.

4. Parity, failure to maintain

In action to foreclose a mortgage executed in 1927, mortgagors' cause of defense alleging that by reason of certain congressional legislation passed in 1933, and acts of the President, fixing the gold content of the dollar at 59 cents, mortgagors should be entitled to pay balance due on mortgage note in dollars of value of 59 cents, but that because of illegal acts of the Federal Reserve Banking System in setting at naught the efforts of the President and Congress to relieve debtors, money lenders were enabled to recover more than the principal sum of loans and interest and to conceal the usurious character of debt collection, did not state a defense. Nye v. Schwab, 1938, 16 NE.2d 783, 58 Ohio App. 422.

The alleged fact that the Secretary of the United States Treasury failed in his duty to maintain the parity of currency with standard fixed therefor by act of Congress and the President would not render usurious the transaction whereby private individuals had loaned money. Id.

5. Validity of proclamation

Presidential proclamation issued pursuant to authority conferred on the President by Congress, fixing the weight of the gold dollar, is valid. Bakewell v. U. S., D.C.Mo.1939, 28 F.Supp. 504, affirmed 110 F.2d 564, certiorari denied 60 S.Ct. 1081, 310 U.S. 638, 84 L.Ed. 1407.

6. Sale of newly mined silver

Under this chapter and Proclamations of President, owners of silver had right to sell as newly mined silver, silver from a mixture containing newly mined, domestic, secondary or foreign silver but the right was conditional and it was essential that the amount of silver tendered for purchase by United States Mint as newly mined silver from a mixture together with the amount that had theretofore been sold from the mixture as newly mined silver should not exceed the total amount of newly mined silver in the mixture and that the silver tendered for purchase should be accompanied by truthful supporting affidavits covering sales from miners of newly mined silver equal to the amount of silver tendered to the mint for purchase. Swisher v. U. S., C.C.A.Colo.1940, 109 F. 2d 1000.

7. Standard for dollar

Where dollar standard controlling United States currency had remained unaltered since long before testator's death, except by Proclamation No. 2072, following this section, amount payable to testator's children under will providing for annual annuities amounting to a specified number of "dollars" was not determined upon a standard for a dollar established by said proclamation. Rogers v English, 1943, 33 A.2d 540, 130 Conn. 332, 147 A. L.R. 812.

8. Aliens

An alien who acquires a bond issued in the United States subject to American laws, becomes, so far as the bond is concerned, subject to such American laws to the same extent as an American citizen Hartmann v. U. S., 1946, 65 F. Supp. 397, 106 Ct.Cl. 686, certiorari denied 67 S.Ct. 1080, 330 U.S. 842, 91 L.Ed. 1288.

§ 822. Rules and regulations

The Secretary of the Treasury, with the approval of the President, is hereby authorized to make and promulgate rules and regulations covering any action taken or to be taken by the President under subsection (a) or (b) of section 821 of this title. (May 12, 1933, c. 25, Title III, § 44, 48 Stat. 53.)

1. Ratification

Even if it could be said that the pertinent Treasury regulations and the action of the Mint officials were doubtful, said regulations and actions were approved, ratified, and confirmed by this section. Alaska Juneau Gold Mining Co. v. U. S., 1942, 94 Ct.Cl. 15.

§ 822a. Stabilization of exchange value of dollar; stabilization fund; payment of subscription to International Monetary Fund; repayment covered into Treasury

(a) For the purpose of stabilizing the exchange value of the dollar, the Secretary of the Treasury, with the approval of the President, directly or through such agencies as he may designate, is authorized, for the account of the fund established in this section, to deal in gold and foreign exchange and such other instruments of credit and securities as he may deem necessary to carry out the purpose of this section. An annual audit of such fund shall be made and a report thereof submitted to the President and to the Congress.

* * * * * * * * * * *

(b) To enable the Secretary of the Treasury to carry out the provisions of this section there is hereby appropriated, out of the receipts which are directed to be covered into the Treasury under section 408b of this title, the sum of $2,000,000,000, which sum when available shall be deposited with the Treasurer of the United States in a stabilization fund (hereinafter called the "fund") under the exclusive control of the Secretary of the Treasury, with the approval of the President, whose decisions shall be final and not be subject to review by any other officer of the United States. The fund shall be available for expenditure, under the direction of the Secretary of the Treasury and in his discretion, for any purpose in connection with carrying out the provisions of this section, including the investment and reinvestment in direct obligations of the United States of any portions of the fund which the Secretary of the Treasury, with the approval of the President, may from time to time determine are not currently required for stabilizing the exchange value of the dollar. Such fund shall not be used in any manner whereby direct control and custody thereof pass from the President and the Secretary of the Treasury. The proceeds of all sales and investments and all earnings and interest accruing under the operations of this section shall be paid into the fund and shall be available for the purposes of the fund.

(c) The Secretary of the Treasury is directed to use $1,800,000,000 of the fund established in this section to pay part of the subscription of the United States to the International Monetary Fund; and any repayment thereof shall be covered into the Treasury as a miscellaneous receipt. Jan. 30, 1934, c. 6, § 10, 48 Stat. 341, as amended Jan. 23, 1937, 2 p. m., c. 5, § 1, 50 Stat. 4; July 6, 1939, c. 260, §§ 1, 2, 53 Stat. 998; June 30, 1941, c. 265, § 1, 55 Stat. 395; Apr. 29, 1943, c. 76, §§ 1, 2, 57 Stat. 68; July 31, 1945, c. 339, § 7(a), 59 Stat. 514.

Subsec. (a) amended by Act July 6, 1939, § 1, cited to text, by addition of words "and to the Congress" at the end thereof.

Subsec. (b) amended by Act April 29, 1943, § 1, cited to text, which inserted sentence beginning "Such fund shall not be used."

Subsec. (c) amended by Acts July 31, 1945, April 29, 1943, and June 30, 1941, all cited to text. Act July 31, 1945 omitted expiration date of section entirely and inserted in lieu thereof present provisions. Act April 29, 1943, extended expiration date to June 30, 1945. Act June 30, 1941, extended expiration date to June 30, 1943.

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 822b. Rules and regulations

The Secretary of the Treasury is authorized to issue, with the approval of the President, such rules and regulations as the Secretary may deem necessary or proper to carry out the purposes of sections 315b, 405b, 408a, 408b, 440–446, 752, 754a, 754b, 767, 821, 822a, and 824 of this title and sections 213, 411–415, 417, and 467 of Title 12. Jan. 30, 1934, c. 6, § 11, 48 Stat. 342.

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

§ 823. Acceptance of silver in payment of foreign debts; issuance of silver certificates; coinage of silver for redemption of certificates; redemption and reissuance of certificates; rules and regulations

(a) The President is authorized, for a period of six months from May 12, 1933, to accept silver in payment of the whole or any part of the principal or interest now due, or to become due within six months after such date, from any foreign government or governments on account of any indebtedness to the United States, such silver to be accepted at not to exceed the price of 50 cents an ounce in United States currency. The aggregate value of the silver accepted under this section shall not exceed $200,000,000.

(b) The silver bullion accepted and received under the provisions of this section shall be subject to the requirements of existing law and the regulations of the mint service governing the methods of determining the amount of pure silver contained, and the amount of the charges or deductions, if any, to be made; but such silver bullion shall not be counted as part of the silver bullion authorized or required to be purchased and coined under the provisions of existing law.

(c) The silver accepted and received under the provisions of this section shall be deposited in the Treasury of the United States, to be held, used, and disposed of as in this section provided.

(d) The Secretary of the Treasury shall cause silver certificates to be issued in such denominations as he deems advisable to the total number of dollars for which such silver was accepted in payment of debts. Such silver certificates shall be used by the Treasurer of the United States in payment of any obligations of the United States.

(e) The silver so accepted and received under this section shall be coined into standard silver dollars and subsidiary coins sufficient, in the opinion of the Secretary of the Treasury, to meet any demands for redemption of such silver certificates issued under the provisions of this section, and such coins shall be retained in the Treasury for the payment of such certificates on demand. The silver so accepted and received under this section, except so much thereof as is coined under the provisions of this section, shall be held in the Treasury for the sole purpose of aiding in maintaining the parity of such certificates as provided in existing law. Any such certificates or reissued certificates, when presented at the Treasury, shall be redeemed in standard silver dollars, or in subsidiary silver coin, at the option of the holder of the certificates: *Provided*, That, in the redemption of such silver certificates issued under this section, not to exceed one third of the coin required for such redemption may in the judgment of the Secretary of the Treasury be made in subsidiary coins, the balance to be made in standard silver dollars.

(f) When any silver certificates issued under the provisions of this section are redeemed or received into the Treasury from any source whatsoever, and belong to the United States, they shall not be retired, canceled, or destroyed, but shall be reissued and paid out again and kept in circulation; but nothing herein shall prevent the cancelation and destruction of mutilated certificates and the issue of other certificates of like denomination in their stead, as provided by law.

(g) The Secretary of the Treasury is authorized to make rules and regulations for carrying out the provisions of this section. (May 12, 1933, c. 25, Title III, § 45, 48 Stat. 53.)

Ratification of Acts of President and Secretary of the Treasury under this section, see section 213 of Title 12, Banks and Banking.

§ 824. Ratification of Acts of President and Secretary of Treasury

All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made or issued by the President of the United States or the Secretary of the Treasury, under sections 201 to 211 of Title 12, or

under section 821 or 823 of this title, are hereby approved, ratified, and confirmed. Jan. 30, 1934, c. 6, § 13, 48 Stat. 343.

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

CHAPTER 14.—FINANCIAL CONTROL OF GOVERNMENT CORPORATIONS [NEW]

SUBCHAPTER I.—PURPOSES

Sec.
841. Declaration of policy.

SUBCHAPTER II.—WHOLLY OWNED GOVERNMENT CORPORATIONS

846. Definition of "wholly owned Government corporation".
847. Preparation of annual business-type budget; form, content, and manner of submission.
848. Transmission of budget programs to Congress; amendments; effective date.
849. Consideration of programs by Congress; enactment of necessary legislation; effect of section on certain existing authority of corporations.
850. Audit of financial transactions; rules and regulations; retention of certain powers of Tennessee Valley Authority; place of audit; access to books, records, etc.; effective date.
851. Audit report to Congress; scope and contents; specific itemization of operations without color of authority; copies to President, etc.
852. Corporation deemed Government agency; approval by Congress; effect; entity unaffected.

SUBCHAPTER III.—MIXED-OWNERSHIP GOVERNMENT CORPORATIONS

856. Definition of "mixed-ownership Government corporations".
857. Audit of financial transactions; rules and regulations; place of audit; access to books, records, etc.; effective date.
858. Audit report to Congress; scope and contents; specific itemization of operations without color of authority; copies to President, etc.
859. Presidential recommendations as to return of Government capital to Treasury.

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

866. Auditing expenses.
(a) Payment by General Accounting Office; reimbursement; disposition of reimbursing funds; utilization of reports.
(b) Employment of personnel; compensation.
(c) Audit authorization.
(d) Limitation of payment for private audits; exception.
867. Depositary for banking or checking accounts; exemption of temporary accounts and accounts of certain corporations.
868. Bonds, notes, and debentures, etc.
(a) Maturity dates, interest rates, terms, and conditions.
(b) Limitations on sale and purchase; waiver.
(c) Delegation of authority by Secretary of the Treasury.
(d) Exemption of corporations under certain conditions; exemption of certain corporations.
869. Creation, organization, or acquisition of corporations; liquidation of certain corporations; reincorporation.
870. Consolidation of banking and checking accounts of corporations and agencies [New].
871. Use of funds for construction or purchase of office buildings in Washington, D. C. [New].

SUBCHAPTER I.—PURPOSES

§ 841. Declaration of policy

It is declared to be the policy of the Congress to bring Government corporations and their transactions and operations under annual scrutiny by the Congress and provide current financial control thereof. Dec. 6, 1945, c. 557, § 2, 59 Stat. 597.

Popular name. Congress in enacting this legislation provided by section 1 of Act Dec. 6, 1945, cited to text, that the title of this Act should be the "Government Corporation Control Act".

Cross References. Annual budget for synthetic rubber disposal program, see section 1941g (e) of Appendix to Title 50, War and National Defense.

Limitation on use of funds for construction of office buildings in Washington, D. C., for use of Government, see section 351 of Title 40, Public Buildings, Property, and Works.

Congressional Comment: For legislative history and purpose of Act Dec. 6, 1945, cited to text, see 1945 U.S.Code Cong.Service, p. 887.

SUBCHAPTER II.—WHOLLY OWNED GOVERNMENT CORPORATIONS

§ 846. Definition of "wholly owned Government corporation"

As used in this chapter the term "wholly owned Government corporation" means the Commodity Credit Corporation; Federal Intermediate Credit Banks; Production Credit Corporations; Regional Agricultural Credit Corporations; Farmers Home Corporation; Federal Crop Insurance Corporation; Federal Farm Mortgage Corporation; Federal Surplus Commodities Corporation; Reconstruction Finance Corporation; Defense Plant Corporation; Defense Supplies Corporation; Metals Reserve Company; Rubber Reserve Company; War Damage Corporation; Federal National Mortgage Association; the RFC Mortgage Company; Disaster Loan Corporation; Inland Waterways Corporation; Warrier River Terminal Company; Virgin Islands Corporation; Federal Prison Industries, Incorporated; United States Spruce Production Corporation; Institute of Inter-American Affairs; Institute of Inter-American Transportation; Inter-American Educational Foundation, Incorporated; Inter-American Navigation Corporation; Prencinradio, Incorporated; Cargoes, Incorporated; Export-Import Bank of Washington; Petroleum Reserves Corporation; Rubber Development Corporation; U. S. Commercial Company; Smaller War Plants Corporation; Federal Public Housing Authority (or Public Housing Administration) and including public housing projects financed from appropriated funds and operations thereof; Defense Homes Corporation; Federal Savings and Loan Insurance Corporation; Home Owners' Loan Corporation; United States Housing Corporation; Federal Housing Administration; Panama Canal Company; Tennessee Valley Authority; and Tennessee Valley Associated Cooperatives, Incorporated. Dec. 6, 1945, c. 557, Title I, § 101, 59 Stat. 597, amended 1947 Reorg. Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 952; Aug. 10, 1948, c. 832, Title V, § 501 (b), 62 Stat. 1283; June 30, 1949, c. 285, § 13, 63 Stat. 356; Sept. 26, 1950, c. 1049, § 2 (a) (2), 64 Stat. 1038.

References in Text. The "Defense Plant Corporation; Defense Supplies Corporation; Metals Reserve Company; Rubber Reserve Company; and the Disaster Loan Corporation" referred to in text were dissolved and the functions transferred to the Reconstruction Finance Corporation by joint res. June 30, 1945, c. 215, § 1, 59 Stat. 310, eff. July 1, 1945.

1949 Amendment. Act June 30, 1949, cited to text, amended section by substituting "Virgin Islands Corporation" for "The Virgin Islands Company".

1948 Amendment. Act Aug. 10, 1948, cited to text, amended section by inserting "Federal Housing Administration" following "United States Housing Corporation".

Change of Name. The Panama Railroad Company was redesignated Panama Canal Company by Act Sept. 26, 1950, cited to text and set out as section 1305—1 of Title 48, Territories and Insular Possessions. For effective date of this change, see note under said section 1305—1.

The name of the United States Housing Authority was changed to Public Housing Administration by 1947 Reorg. Plan No. 3, cited to text, and set out in note to section 133y-16 of Title 5, Executive Departments and Government Officers and Employees.

Effective date. Section 14 of Act June 30, 1949, cited to text, provided that the amendment of this section by section 13 of said Act June 30, 1949 should be effective as of June 30, 1949.

Continuation of Virgin Islands Company as United States agency until June 30, 1949. Act June 30, 1948, c. 768, 62 Stat. 1170, provided: "That, notwithstanding any other provision of law, the Virgin Islands Company shall continue as an agency of the United States until the close of business June 30, 1949. It is authorized to borrow from the Treasury of the United States, and the Secretary of the Treasury shall loan to it upon the request of its president, such sums as may be required to carry out its operations until such date, not exceeding in the aggregate $950,000. Each loan shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the making of the loan."

Abolishment of Home Owners' Loan Corporation. For dissolution and abolishment of Home Owners' Loan Corporation, referred to this section, by Act June 30, 1953, c. 170, § 21, 67 Stat. 126, see note under section 1463 of Title 12, Banks and Banking.

Termination and Liquidation of Reconstruction Finance Corporation. Termination on June 30, 1954 of Reconstruction Finance Corporation, and liquidation thereof, see sections 603(a), 608 and 609 of Title 15, Commerce and Trade, and notes thereunder.

Cross References. Institute of Inter-American Affairs as subject to this chapter, see section 281*l* of Title 22, Foreign Relations and Intercourse.

Legislative History: For legislative history and purpose of Act Aug. 10, 1948, cited to text, see 1948 U.S.Code Cong. Service, p. 2351. See, also, Act June 30, 1949, 1949 U.S.Code Cong. Service, p. 1465; Act Sept. 26, 1950, 1950 U.S. Code Cong.Service, p. 3926.

§ 847. Preparation of annual business-type budget; form, content, and manner of submission

Each wholly owned Government corporation shall cause to be prepared annually a business-type budget which shall be submitted to the Bureau of the Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented. The budget program shall be a business-type budget, or plan of operations, with due allowance given to the need for flexibility, including provision for emergencies and contingencies, in order that the corporation may properly carry out its activities as authorized by law. The budget program shall contain estimates of the financial condition and operations of the corporation for the current and ensuing fiscal years and the actual condition and results of operation for the last completed fiscal year. Such budget program shall include a statement of financial condition, a statement of income and expense, an analysis of surplus or deficit, a statement of sources and application of funds, and such other supplementary statements and information as are necessary or desirable to make known the financial condition and operations of the corporation. Such statements shall include estimates of operations by major types of activities, together with estimates of administrative expenses, estimates of borrowings, and estimates of the amount of Government capital funds which shall be returned to the Treasury during the fiscal year or the appropriations required to provide for the restoration of capital impairments. Dec. 6, 1945, c. 557, Title I, § 102, 59 Stat. 598, amended Sept. 12, 1950, c. 946, Title I, pt. I, § 105, 64 Stat. 834.

1950 Amendment. Act Sept. 12, 1950, cited to text, amended former first two sentences of section principally by substituting "business-type budget" for "budget program", by empowering the President to establish the date of submission of the budget to the Bureau of the Budget in lieu of the former provision that it be submitted to the President, through the Bureau, on or before September 15th of each year, and by consolidating the two sentences into one sentence.

Legislative History: For legislative history and purpose of Act Sept. 12, 1950, see 1950 U.S.Code Cong.Service, p. 3707.

§ 848. Transmission of budget programs to Congress; amendments; effective date

The budget programs of the corporations as modified, amended, or revised by the President shall be transmitted to the Congress as a part of the annual Budget required by sections 1, 2, 11, 13–24, 41–43, 44–47, 49, 52–55, 71, 471, and 581 of this title. Amendments to the annual budget programs may be submitted from time to time.

Budget programs shall be submitted for all wholly owned Government corporations covering operations for the fiscal year commencing July 1, 1946, and each fiscal year thereafter. Dec. 6, 1945, c. 557, Title I, § 103, 59 Stat. 598.

§ 849. Consideration of programs by Congress; enactment of necessary legislation; effect of section on certain existing authority of corporations

The Budget programs transmitted by the President to the Congress shall be considered and legislation shall be enacted making necessary appropriations, as may be authorized by law, making available for expenditure for operating and administrative expenses such corporate funds or other financial resources or limiting the use thereof as the Congress may determine and providing for repayment of capital funds and the payment of dividends. The provisions of this section shall not be construed as preventing Government corporations from carrying out and financing their activities as authorized by existing law, nor as affecting the provisions of section 831 of Title 16. The provisions of this section shall not be construed as affecting the existing authority of any Government corporation to make contracts or other commitments without reference to fiscal year

limitations. Dec. 6, 1945, c. 557, Title I, § 104, 59 Stat. 598, amended July 30, 1947, c. 358, Title III, § 307, 61 Stat. 584.

1947 Amendment. Act July 30, 1947, cited to text amended section to put the Congress in a position to place such limitations on the use of corporate funds as may be necessary to carry out the will of Congress.

§ 850. Audit of financial transactions; rules and regulations; retention of certain powers of Tennessee Valley Authority; place of audit; access to books, records, etc.; effective date

The financial transactions of wholly owned Government corporations shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States: *Provided*, That such rules and regulations may provide for the retention at the offices of such corporations, in whole or in part, of any accounts of accountable officers, covering corporate financial transactions, which are required by existing law to be settled and adjusted in the General Accounting Office, and for the settlement and adjustment of such accounts in whole or in part upon the basis of examinations in the course of the audit provided by this section, but nothing in this proviso shall be construed as affecting the powers reserved to the Tennessee Valley Authority in section 831h (b) of Title 16. The audit shall be conducted at the place or places where the accounts of the respective corporations are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the respective corporations and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. The audit shall begin with the first fiscal year commencing after the enactment of this chapter. Dec. 6, 1945, c. 557, Title I, § 105, 59 Stat. 599.

Audit of Federal Housing Administration. Section 501(b) of Act Aug. 10, 1948, c. 832, Title V, 62 Stat. 1283, provided in part: "That, as to the Federal Housing Administration, the audit required by section 105 of said Act [this section] shall begin with the fiscal year commencing July 1, 1948."

Cross References. Payment of unpaid checks, see sections 132–134 of this title.

§ 851. Audit report to Congress; scope and contents; specific itemization of operations without color of authority; copies to President, etc.

A report of each such audit for each fiscal year ending on June 30 shall be made by the Comptroller General to the Congress not later than January 15 following the close of the fiscal year for which such audit is made. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep Congress informed of the operations and financial condition of the several corporations, together with such recommendations with respect thereto as the Comptroller General may deem advisable, including a report of any impairment of capital noted in the audit and recommendations for the return of such Government capital or the payment of such dividends as, in his judgment, should be accomplished. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary of the Treasury, and to the corporation concerned at the time submitted to the Congress. Dec. 6, 1945, c. 557, Title I, § 106, 59 Stat. 599.

§ 852. Corporation deemed Government agency; approval by Congress; effect; entity unaffected

Whenever it is deemed by the Director of the Bureau of the Budget, with the approval of the President, to be practicable and in the public interest that any wholly owned Government corporation be treated with respect to its appropriations, expenditures, receipts, accounting, and other fiscal matters as if it were a Government agency other than a corporation, the Director shall include in connection with the budget program of such corporation in the Budget a recommendation to that effect. If the Congress approves such recommendation in connection with the budget program for any fiscal year, such corporation, with respect to subsequent fiscal years, shall be regarded as an establishment other than a corporation for the purposes of sections 1, 2, 11, 13–24, 41–43, 44–47, 49, 52–55, 71, 471, and 581 of this title, and other provisions of law relating to appropriations, expenditures, receipts, accounts, and other fiscal matters, and shall not be subject to the provisions of this chapter other than this section. The corporate entity shall not be affected by this section. Dec. 6, 1945, c. 557, Title I, § 107, 59 Stat. 599.

SUBCHAPTER III.—MIXED-OWNERSHIP GOVERNMENT CORPORATIONS

§ 856. Definition of "mixed-ownership Government corporations"

As used in this chapter the term "mixed-ownership Government corporations" means (1) the Central Bank for Cooperatives and the Regional Banks for Cooperatives, (2) Federal Land Banks, (3) Federal Home Loan Banks, and (4) Federal Deposit Insurance Corporation. Dec. 6, 1945, c. 557, Title II, § 201, 59 Stat. 600.

§ 857. Audit of financial transactions; rules and regulations; place of audit; access to books, records, etc.; effective date

The financial transactions of mixed-ownership Government corporations for any period during which Government capital has been invested therein shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the respective corporations are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the respective corporations and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. The audit shall begin with the first fiscal year commencing after the enactment of this chapter. Dec. 6, 1945, c. 557, Title II, § 202, 59 Stat. 600.

Payment of unpaid checks, see sections 132–134 of this title.

§ 858. Audit report to Congress; scope and contents; specific itemization of operations without color of authority; copies to President, etc.

A report of each such audit for each fiscal year ending on June 30 shall be made by the Comptroller General to the Congress not later than January 15, following the close of the fiscal year for which such audit is made. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep Congress informed of the operations and financial condition of,

and the use of Government capital by, each such corporation, together with such recommendations with respect thereto as the Comptroller General may deem advisable, including a report of any impairment of capital or lack of sufficient capital noted in the audit and recommendations for the return of such Government capital or the payment of such dividends as, in his judgment, should be accomplished. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary of the Treasury, and to the corporation concerned at the time submitted to the Congress. Dec. 6, 1945, c. 557, Title II, § 203, 59 Stat. 600.

§ 859. Presidential recommendations as to return of Government capital to Treasury

The President shall include in the annual Budget any recommendations he may wish to make as to the return of Government capital to the Treasury by any mixed-ownership corporation. Dec. 6, 1945, c. 557, Title II, § 204, 59 Stat. 601.

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

§ 866. Auditing expenses—Payment by General Accounting Office; reimbursement; disposition of reimbursing funds; utilization of reports

(a) The expenses of auditing the financial transactions of wholly owned and mixed-ownership Government corporations as provided in sections 850 and 857 of this title shall be borne out of appropriations to the General Accounting Office, and appropriations in such sums as may be necessary are authorized: *Provided*, That each such corporation shall reimburse the General Accounting Office for the full cost of any such audit as billed therefor by the Comptroller General, and the General Accounting Office shall deposit the sums so reimbursed into the Treasury as miscellaneous receipts: *Provided further*, That in making the audits provided in said sections the Comptroller General shall, to the fullest extent deemed by him to be practicable, utilize reports of examinations of Government corporations made by a supervising administrative agency pursuant to law.

Employment of personnel; compensation

(b) For the purpose of conducting such audit the Comptroller General is authorized in his discretion to employ not more than ten persons without regard to sections 661–663, 664–669, 670–672, 673, and 674 of Title 5, only one of whom may be compensated at a rate of as much as but not more than $10,000 per annum, and to employ by contract, without regard to section 5 of Title 41, professional services of firms and organizations for temporary periods or for special purposes.

Audit authorization

(c) The audit provided in sections 850 and 857 of this title shall be in lieu of any audit of the financial transactions of any Government corporation required to be made by the General Accounting Office for the purpose of a report to the Congress or to the President under any existing law.

Limitation of payment for private audits; exception

(d) Unless otherwise expressly provided by law, no funds of any Government corporation shall be used to pay the cost of any private audit of the financial records of the offices of such corporation, except the cost of

such audits contracted for and undertaken prior to April 25, 1945. Dec. 6, 1945, c. 557, Title III, § 301, 59 Stat. 601.

Cost of Federal Housing Administration audits prior to July 1, 1948. Section 501(b) of Act Aug. 10, 1948, c. 832, Title V, 62 Stat. 1283, provided in part that: "The exception contained in section 301(d) of said Act [subsec. (d) of this section] shall be construed to refer to the cost of audits contracted for prior to July 1, 1948."

§ 867. Depositary for banking or checking accounts; exemption of temporary accounts and accounts of certain corporations

The banking or checking accounts of all wholly owned and mixed-ownership Government corporations shall be kept with the Treasurer of the United States, or, with the approval of the Secretary of the Treasury, with a Federal Reserve bank, or with a bank designated as a depositary or fiscal agent of the United States: *Provided*, That the Secretary of the Treasury may waive the requirements of this section under such conditions as he may determine: *And provided further*, That this section will not apply to the establishment and maintenance in any bank for a temporary period of banking and checking accounts not in excess of $50,000 in any one bank. The provisions of this section shall not be applicable to Federal Intermediate Credit Banks, Production Credit Corporations, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, or the Federal Land Banks, except that each such corporation shall be required to report annually to the Secretary of the Treasury the names of the depositaries in which such corporation keeps a banking or checking account, and the Secretary of the Treasury may make a report in writing to the corporation, to the President, and to the Congress which he deems advisable upon receipt of any such annual report. Dec. 6, 1945, c. 557, Title III, § 302, 59 Stat. 601.

§ 868. Bonds, notes, and debentures, etc.—Maturity dates, interest rates, terms, and conditions

(a) All bonds, notes, debentures, and other similar obligations which are on or after December 6, 1945, issued by any wholly owned or mixed-ownership Government corporation and offered to the public shall be in such forms and denominations, shall have such maturities, shall bear such rates of interest, shall be subject to such terms and conditions, shall be issued in such manner and at such times and sold at such prices as have been or as may be approved by the Secretary of the Treasury.

Limitations on sale and purchase; waiver

(b) On or after December 6, 1945, no wholly owned or mixed-ownership Government corporation shall sell or purchase any direct obligation of the United States or obligation guaranteed as to principal or interest, or both, for its own account and in its own right and interest, at any one time aggregating in excess of $100,000, without the approval of the Secretary of the Treasury: *Provided*, That the Secretary of the Treasury may waive the requirement of his approval with respect to any transaction or classes of transactions subject to the provisions of this subsection for such period of time and under such conditions as he may determine.

Delegation of authority by Secretary of the Treasury

(c) The Secretary of the Treasury is authorized to exercise any of the functions vested in him by this section through any officer, or employee of any Federal agency whom he may designate, with the concurrence of the head of the agency concerned, for such purpose.

Exemption of corporations under certain conditions; exemption of certain corporations

(d) Any mixed-ownership Government corporation from which Government capital has been entirely withdrawn shall not be subject to the pro-

visions of section 867 of this title or of this section during the period such corporation remains without Government capital. The provisions of subsections (a) and (b) of this section shall not be applicable to Federal Intermediate Credit Banks, Production Credit Corporations, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, or the Federal Land Banks, except that each such corporation shall be required to consult with the Secretary of the Treasury prior to taking any action of the kind covered by the provisions of subsections (a) and (b) of this section, and in the event an agreement is not reached, the Secretary of the Treasury may make a report in writing to the corporation, to the President, and to the Congress stating the grounds for his disagreement. Dec. 6, 1945, c. 557, Title III, § 303, 59 Stat. 601.

§ 869. Creation, organization, or acquisition of corporations; liquidation of certain corporations; reincorporation

(a) No corporation shall be created, organized, or acquired on or after December 6, 1945, by any officer or agency of the Federal Government or by any Government corporation for the purpose of acting as an agency or instrumentality of the United States, except by Act of Congress or pursuant to an Act of Congress specifically authorizing such action.

(b) No wholly owned Government corporation created by or under the laws of any State, Territory, or possession of the United States or any political subdivision thereof, or under the laws of the District of Columbia, shall continue after June 30, 1948, as an agency or instrumentality of the United States, and no funds of, or obtained from, the United States or any agency thereof, including corporations, shall be invested in or employed by any such corporation after that date, except for purposes of liquidation. The proper corporate authority of every such corporation shall take the necessary steps to institute dissolution or liquidation proceedings on or before that date: *Provided*, That prior thereto any such corporation may be reincorporated by Act of Congress for such purposes and term of existence and with such powers, privileges, and duties as authorized by such Act, including the power to take over the assets and assume the liabilities of its respective predecessor corporation. Dec. 6, 1945, c. 557, Title III, § 304, 59 Stat. 602.

§ 870. Consolidation of banking and checking accounts of corporations and agencies

After June 30, 1949, the corporations or agencies subject to this chapter, are authorized, with the approval of the Comptroller General, to consolidate, notwithstanding the provisions of any other law, into one or more accounts for banking and checking purposes all cash, including amounts appropriated, from whatever source derived: *Provided*, That such cash, including amounts appropriated, of such corporations or agencies shall be expended in accordance with the applicable terms of their respective enabling acts and any other acts applicable to their transactions. Aug. 24, 1949, c. 506, Title III, § 309, 63 Stat. 662.

Codification. Section was enacted as a part of the Independent Offices Appropriation Act, 1950, Act Aug. 24, 1949, cited to text, and not as a part of the Government Corporation Control Act which comprises this chapter.

§ 871. Use of funds for construction or purchase of office buildings in Washington, D. C.

No part of any funds of or available to any wholly owned Government corporation shall be used for the purchase or construction, or in making loans for the purchase or construction of any office building at the seat of government primarily for occupancy by any department or agency of

the United States Government or by any corporation owned by the United States Government. Nov. 1, 1951, c. 664, ch. XIII, § 1307, 65 Stat. 756; July 15, 1952, c. 758, ch. XIV, § 1407, 66 Stat. 660.

Codification. Section enacted as a part of the Supplemental Appropriation Act, 1952, and not as a part of the Government Corporation Control Act which comprises this chapter.

CONSULT GENERAL INDEX POCKET PART

INDEX

†

75